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No. 86-434

Supreme Court U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

MARCH FONG EU, Secretary of State of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; and LEO HIMMELSBACH, District Attorney of Santa Clara County,

Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL,

Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit

MOTION TO AFFIRM OR TO DISMISS

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QUESTIONS PRESENTED

1. Does the First Amendment right of political expression and association apply to state political parties?

2. Do state laws prohibiting state political parties from endorsing candidates in primary elections and prescribing the composition of the parties' governing bodies substantially burden the parties' First Amendment rights?

3. Is a state's asserted interest in maintaining strong political parties to conduct general election campaigns sufficiently compelling to justify restrictions on the political expression and internal governance of state political parties?

4. Did the courts below err in finding that there was no triable question as to whether state regulation of the internal governance of state political parties conflicts with the policies of the parties, where the uncontroverted evidence established that the parties have attempted unsuccessfully over the years to amend the statutory scheme?

5. Does the failure of the Court of Appeals expressly to address appellants' contention that plaintiff central committees were not authorized to bring suit warrant further review by this Court in light of the extensive and uncontroverted record below establishing that all necessary authorizations had been obtained?

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Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit

MOTION TO AFFIRM OR TO DISMISS

STATEMENT

By this motion, appellees respectfully request this Court summarily to affirm the decision below, or to dismiss this appeal for lack of a substantial federal question.

Appellees are seven county central committees of the California Democratic and Republican parties and their chairs, the state central committee of the California Libertarian party and its chair, and other organizations and individuals active in California politics. All appellees are named in the caption. Appellees were plaintiffs below in an action filed in the United States District Court for the Northern District of California on November 17, 1983, seeking declaratory and injunctive relief to secure their First Amendment rights. A first amended complaint was filed on December 5, 1983. Appellants answered on December 15, and 16, 1983.

The first amended complaint contained three causes of action, two of which are presented on this appeal.[1] By their first cause of action, plaintiffs sought the right to endorse, support, or oppose candidates for nomination in direct party primary elections. They were prohibited from doing so under California Elections Code section 11702, enacted in 1963, which provides that the "state convention, state central committee, and the county central committee in each county shall not endorse, support, or oppose, any candidate for nomination by that party

[1] The District Court abstained on the second cause of action, which challenged state law restrictions on the right of political parties to endorse candidates in nonpartisan school, county or municipal office elections, in light of the pendency in the California Supreme Court of an appeal presenting similar issues. The California Supreme Court ultimately decided that state law did not prohibit such endorsements. *Unger* v. *Superior Court*, 37 Cal. 3d 612, 692 P.2d 238, 209 Cal. Rptr. 474 (1984). A ban on nonpartisan endorsements was subsequently enacted by ballot initiative in June, 1986.

for partisan office in the direct primary election" (App. 302a).[2] In addition to the statutory restriction on endorsements, Elections Code section 29430 makes it a misdemeanor for any person to "claim on . . . behalf [of a candidate for nomination of a political party for partisan office] that he or she is the official candidate or the officially endorsed candidate of such political party" (App. 303a). These restrictions on preprimary endorsements are unique to California (App. 33a n.26).

By their third cause of action, plaintiffs sought the right to structure and conduct their internal political party affairs without intrusive and burdensome state interference. Among other restrictions challenged in the third cause of action are Elections Code provisions governing the composition and method of selection of the state central committees, and the length of the state central committee chairperson's term of office (App. 277a-280a). Violations of these provisions are also subject to criminal prosecution. Cal. Elec. Code § 29102 (App. 303a).

Plaintiffs contended below that these various state laws substantially burdened their First Amendment rights of political expression and association. Because there were no compelling state interests justifying this substantial burden, these state laws were alleged to violate the First Amendment.

On February 27, 1984, the parties appeared before the District Court for a status conference. At that conference, the District Court set the date for oral argument on cross-motions for summary judgment and a motion to dismiss that the parties indicated they intended to file. The District Court also issued a briefing schedule in ac-

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[2] As used herein "App." refers to the Appendix to the Jurisdictional Statement, "Add." refers to the Addendum to Appellee's Motion to Affirm or to Dismiss filed herewith under separate cover, and "Juris. Stmt." refers to appellants' Jurisdictional Statement.

cordance with its local rules. The briefing schedule was established in part to attempt to resolve the litigation before the upcoming primary elections (App. 43a). That schedule was subsequently extended at appellants' request to allow them additional time to oppose summary judgment (App. 232a-234a). The District Court further ordered that if appellants were unable to obtain evidence in time to include in their opposition papers, they "may seek leave to introduce evidence into the record which was not available" to them previously (App. 234a).

The competing motions were fully briefed and argued. In support of their motion for summary judgment, plaintiffs filed a 50-page memorandum and 28 declarations detailing the substantial burdens placed upon their First Amendment rights by the complained-of Elections Code provisions. Appellants submitted a 28-page opposition brief and 11 declarations. Both sides filed reply briefs in support of their respective motions. Plaintiffs also filed, in response to an informal discovery request by appellants' counsel, sworn declarations executed on behalf of each central committee plaintiff, establishing that the committees were properly authorized to bring suit (Add. M, P, R, T, U, V, W, Y, 55a-56a, 63a-64a, 68a-69a, 72a-79a, 83a-84a).

Following extended oral argument on April 9, 1984, the District Court granted summary judgment for plaintiffs as to the first cause of action and those portions of the third cause of action involving Elections Code regulation of the selection of state central committee members and the terms of state central committee chairs.[3] On April 16, 1984, appellants filed an emergency motion for

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[3] The District Court granted plaintiffs' motion as to California Elections Code sections 8660, 8661, 8663-8665, 8667, 8669, 9160, 9160.5, 9161, 9161.5, 9162, 9163, and 9164, relating to the selection of state central committee members, sections 9274 and 9816, relating to the terms of the state central committee chairs, section 11702, restricting endorsements in partisan primary elections, and sections

stay of judgment on appeal, which was granted by the Ninth Circuit Court of Appeals on April 24, 1984. A full round of briefing on the merits followed, and the case was argued on May 15, 1984. In response to appellants' argument that they had been improperly denied discovery regarding plaintiffs' authority to bring suit, the Court of Appeals remanded on May 25, 1984, with instructions to the District Court to make findings on this issue (App. 87a). The District Court found on remand that plaintiffs' uncontroverted declarations established that the necessary authorizations had been obtained (App. 74a). Plaintiffs also filed documentation consisting of each central committee's minutes and bylaws regarding authorization (Add. Z-AA, 85a-90a), and the authorization issue was briefed to the Court of Appeals (Add. CC-EE, 94a-123a). Finally, pursuant to an August 5, 1985, Order by the Ninth Circuit, the parties filed a set of supplemental briefs further discussing the ramifications of the First Amendment issues raised on appeal (App. 84a).

On June 18, 1986, the Court of Appeals affirmed, reasoning that the challenged statutes substantially burdened the First Amendment rights of the state and county central committees, and that appellants had failed to demonstrate a compelling state interest that justified this infringement. This appeal followed.

THIS COURT SHOULD AFFIRM THE DECISION BELOW HOLDING THAT THE CHALLENGED STATUTES UNCONSTITUTIONALLY INFRINGE PLAINTIFFS' RIGHTS OF POLITICAL EXPRESSION AND ASSOCIATION

The decision below rests on a straightforward application of the decisions of this Court recognizing that political parties and their adherents "enjoy a constitu-

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29102 and 29430, imposing criminal sanctions for violations of these provisions (App. 68a-70a).

tionally protected right of political association." *Cousins* v. *Wigoda*, 419 U.S. 477, 487 (1975). *Accord Democratic Party of the United States* v. *Wisconsin*, 450 U.S. 107, 120-24 (1981). *See also Lefkowitz* v. *Cunningham*, 431 U.S. 801, 808 (1977) (stating that state and county political party committees are "private, voluntary political associations"). The decision below likewise accords with this Court's teaching that "[a]dvocacy of the election or defeat of candidates . . . is no less entitled to protection under the First Amendment than the discussion of political policy generally or advocacy of the passage or defeat of legislation." *Buckley* v. *Valeo*, 424 U.S. 1, 48 (1976). Applying these principles, the lower federal courts have consistently struck down legislation that substantially burdens the exercise of these First Amendment rights by state and local political parties. *See Republican Party of Connecticut* v. *Tashjian*, 770 F.2d 265 (2d Cir. 1985), *prob. juris noted*, 106 S. Ct. 783 (1986); *Abrams* v. *Reno*, 452 F. Supp. 1166 (S.D. Fla. 1978), *aff'd*, 649 F.2d 342 (5th Cir. 1981), *cert. denied*, 455 U.S. 1016 (1982); *Martin-Trigona* v. *Dunne*, 425 F. Supp. 813 (N.D. Ill. 1977); *Fahey* v. *Darigan*, 405 F. Supp. 1386 (D.R.I. 1975). *See generally* Weisburd, *Candidate-Making and the Constitution: Constitutional Restraints on and Protections of Party Nominating Methods*, 57 S. Cal. L. Rev. 213 (1984); Note, *Developments in the Law—Elections*, 88 Harv. L. Rev. 1114 (1975).

The record before the District Court established that the challenged Elections Code provisions substantially burden plaintiffs' First Amendment rights. Plaintiffs' uncontroverted declarations highlighted the debilitating effects of Elections Code regulation of official party organizations. As those declarations showed, the complained-of statutes have prevented the parties from educating the public regarding the candidates' positions on the issues and have engendered serious voter confusion (*see e.g.*, Christman Dec. ¶¶ 6, 9-10, Add. A 3a-5a; King

Dec. ¶ 5, Add. G 30a-31a; Post Dec. ¶¶ 6, 9-10, Add. J 39a-41a; Romero Dec. ¶ 4, Add. K 48a). For example, stripped of the power to endorse or oppose primary candidates, the Democratic party was rendered impotent in the face of a primary campaign by a former Ku Klux Klan Grand Dragon, who sought and obtained that party's nomination for Congress (Constantini Dec. ¶ 2, Add. C 12a). By the same token, these restrictions have precluded the parties from recruiting or developing candidates for office, and have severely hindered their ability to attract talented and interested people (*see, e.g.*, Coffey Dec. ¶¶ 2-3, Add. B 8a-9a; King Dec. ¶ 6, Add. G 31a; Supp. Layson Dec. ¶¶ 4-6, Add. H 35a).

Based on these and other uncontroverted affidavits submitted below, the Court of Appeals found that "by excluding the committees from the process of choosing party nominees, 'a basic function of a political party [in our system],' *Kusper* v. *Pontikes*, 414 U.S. 51, 58 (1973), the state has effectively drained party central committees of political power" (App. 11a). Similarly, the Court of Appeals found that restrictions on party governance had created "rigid organization[s] incapable of adjusting and responding to changing conditions" (App. 24a). The result has been that "the parties have become weak and fossilized" (App. 32a).

Where, as here, a statute restricts fundamental First Amendment rights, the decisions of this Court hold that it may be sustained only if the government shows that the restriction "is a precisely drawn means of serving a compelling state interest." *Consolidated Edison Company of New York* v. *Public Service Commission*, 447 U.S. 530, 540 (1980); *accord First National Bank of Boston* v. *Bellotti*, 435 U.S. 765, 786 (1978). The burden to show the existence of such an interest rests on the government, *Elrod* v. *Burns*, 427 U.S. 347, 362 (1976), a burden that the Court of Appeals found had not been carried.

In defense of the substantial burden imposed by the challenged Election Code regulations, appellants argued below that the restrictions were necessary to "deflect intra-party rivalry" and to avoid "factionalism" so that the "committees would be in a strong position to carry out their statutory responsibility of winning the general election campaigns of party nominees" (Juris. Stmt. 18; App. 26a). The Court of Appeals correctly held that these interests are not compelling (App. 34a). As the court explained:

> the state has no interest in regulating political parties for the purpose of helping them win or retain voter support. . . . A party's survival depends on its ability to compete in the free marketplace of political ideas and ideals. The First Amendment limits the state to a neutral role in that competitive process. The state may not interfere with the associational rights of political parties beyond what is necessary to assure honest and orderly elections.

(App. 28a). The Court of Appeals therefore affirmed the trial court's entry of summary judgment invalidating the challenged statutes on First Amendment grounds. That judgment should be affirmed by this Court as well.

THE QUESTIONS PRESENTED ARE NOT SUBSTANTIAL

In urging plenary review by this Court, appellants do not challenge the correctness of this analysis. Instead, appellants raise two ancillary points that are not supported by the law or the record below. *First*, appellants cite the need to resolve "confusion" regarding the "states' authority to regulate their electoral systems" purportedly arising from the failure of the lower federal courts to distinguish this Court's decisions involving state political parties from decisions involving national political parties (Juris. Stmt. 16-17). *Second*, appellants point to purportedly substantial questions regarding justiciability and the summary judgment procedures employed below

(Juris. Stmt. 21-25). None of these issues presents a substantial question warranting plenary review by this Court.

A. The Decisions Below Represent the Proper Accommodation of the Interests of Political Parties and the State under this Court's Controlling First Amendment Precedents

As this Court has long recognized, the endorsement or support of political candidates is an essential and constitutionally protected form of political expression. "[I]t can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office." *Monitor Patriot Co.* v. *Roy*, 401 U.S. 265, 272 (1971). In our democracy, free discussion of political affairs is indispensable to decision-making and "is the essence of self-government." *First National Bank of Boston* v. *Bellotti*, 435 U.S. 765, 777 & n.12 (1978) (quoting *Garrison* v. *Louisiana*, 379 U.S. 64, 75 (1964)). The First Amendment exists precisely to ensure that these vital political discussions remain uninhibited. "Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussions of governmental affairs. This of course includes discussions of candidates . . . ." *Mills* v. *Alabama*, 384 U.S. 214, 218 (1966).

Political parties, whether state or national, deserve constitutional protection because they are the primary vehicles by which citizens exercise their rights of political expression and political association. "Exercise of these basic freedoms . . . has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." *Sweezy* v. *New Hampshire*, 354 U.S. 234, 250 (1957). *See also Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 294 (1981) ("the practice of persons . . . banding to-

gether to achieve a common end is deeply embedded in the American political process"). The government's interference with a political party's right to endorse or to oppose candidates for elective office therefore infringes both the party's freedom of political expression and its members' "right to associate with the political party of one's choice." *Kusper* v. *Pontikes*, 414 U.S. 51, 56, 57 (1973).

Similarly, "the right of individuals to associate for the advancement of political beliefs" is fundamental, *Williams* v. *Rhodes*, 393 U.S. 23, 30 (1968), and includes the freedom "to identify the people who constitute the association, and to limit the association to those people only." *Democratic Party*, 450 U.S. at 122. Applying these principles, the lower courts have recognized that "there must be a right not only to form political associations but to organize and direct them in the way that will make them most effective." *Ripon Society, Inc.* v. *National Republican Party*, 525 F.2d 567, 585 (D.C. Cir. 1975), *cert. denied*, 424 U.S. 933 (1976).

The decisions below fit squarely within this analysis. As the Court of Appeals observed, the Elections Code ban on preprimary endorsements "prohibits political speech, the inviolability of which rests at the core of the First Amendment" (App. 33a), and has "effectively drained party central committees of political power" (App. 11a). Similarly, Elections Code regulation of the composition of state central committees "burden[s] the parties' right to govern themselves as they think best" (App. 23a). The courts below expressly found that none of the challenged restrictions furthered a compelling state interest.

Appellants concede by their silence that the decisions below properly applied these settled First Amendment principles. Nevertheless, appellants assert that further review is necessary to clarify the purportedly different First Amendment considerations applicable to regulation

of state as opposed to national political parties. Appellants nowhere explain the basis for this purported distinction, except to assert that the central committees are required by statute to conduct general election campaigns for their respective party's candidates (Juris. Stmt. 17). Appellants then argue (Juris. Stmt. 17-18) that because the committees have not challenged this statutory requirement, which assertedly furthers the state's interest in the orderly conduct of general election campaigns, the Elections Code provisions challenged herein should have been upheld under this Court's decisions in *Storer* v. *Brown*, 415 U.S. 724 (1974), and *Marchioro* v. *Chaney*, 442 U.S. 191 (1979).

Appellants' argument fails for two reasons. *First*, the uncontroverted record below establishes that the candidates, not the parties, run the general election campaign (*see, e.g.*, Supp. Layson Dec. ¶ 7, Add. H 36a). Although appellants argue that under California law the duty to run the general election campaign belongs to the central committees (Juris. Stmt. 17), plaintiffs' declarations demonstrated that the Elections Code prohibition on pre-primary endorsements has created a political vacuum that each candidate's individual campaign has been left to fill. As the Court of Appeals recognized, "each candidate forms an ad hoc committee to run his primary campaign and, if he is successful, that committee goes on to run the general election campaign independently of the party organization" (App. 35a). There is accordingly no factual linkage between the challenged Elections Code restrictions and the state's asserted interest in preserving the integrity of the general election.

Second, neither *Storer* nor *Marchioro* holds that state political parties have a lesser claim to the protections of the First Amendment than their national counterparts. In *Storer*, this Court concluded that a defeated candidate for nomination had no right to "instantaneous access to the ballot" in the general election. 415 U.S. at

736. The decision below properly read *Storer* as providing that the state's interest in regulating access to the general election ballot entitled the state to restrict intra-party competition during the period *following* the primary election. *See id.* at 752-57. *Storer* does not, however, "suggest that a political party could invoke the powers of the State to assure monolithic control over its own members and supporters." *Anderson* v. *Celebreeze*, 460 U.S. 780, 803 (1983). To the contrary, this Court recognized in *Storer* that the primary was the forum in which "contending forces within the party . . . finally settle their differences." 415 U.S. at 735. The decision below correctly observed that "*Storer* does not stand for the proposition that the state has a compelling interest in perpetuating strong ballot-qualified parties," and does not "authorize states to regulate political parties in an effort to keep them strong and conflict-free" (App. 29a). As the court explained:

> the state's asserted interest in fostering party leadership does not derive from the state's interest in orderly elections. Weak and divided campaign leadership may result in defeat at the polls, but it does not threaten the state's interest in an orderly election process. [Appellants'] argument confuses campaigns with elections, partisan interests with the interests of the state. [R]egulations designed to give ballot-qualified parties effective campaign leadership do not rest on a compelling state interest.

(App. 30a n.24). *See also* App. 35a (same analysis applied in invalidating preprimary endorsements).

The Court of Appeals likewise emphasized that appellants' reliance on *Marchioro* "outstrips the limited rationale of that case" (App. 30a n.24). In *Marchioro*, this Court affirmed the lower court's holding that legislation establishing the Washington state central committee and empowering it to perform certain limited duties, such as calling party conventions and filling vacancies on the

party ticket, was not a substantial burden on the party's associational rights. Unlike the present case, however, the regulations at issue in *Marchioro did not purport to govern the party's internal policy-making.* 442 U.S. at 198-99. To the contrary, the party itself had freely delegated to the central committee the responsibility for raising funds, recruiting candidates, and setting policy. *Id.* State regulation of the composition of the central committee was accordingly immune from constitutional attack because the party, not the state, had placed the committee at the helm of the party's internal governance. As the decision below correctly observed, the source of plaintiffs' grievance in *Marchioro* "was the party's exercise of its right to self-governance, not state interference with that right" (App. 30a n.24). By contrast, the Elections Code provisions at issue here prescribe not only the composition of the parties' central committees, but their political function as well. As the Ninth Circuit recognized, appellants engage in " 'bootstrap reasoning' " in arguing that "by regulating the committees, the legislature may deprive them of First Amendment rights" (App. 19a) (quoting *Abrams* v. *Reno*, 452 F. Supp. at 1170).

Appellants nowhere dispute that the prior decisions of this Court establish that political parties enjoy a fundamental right of political expression and association under the First Amendment. *See Democratic Party of the United States* v. *Wisconsin*, 450 U.S. 107 (1981); *Cousins* v. *Wigoda*, 419 U.S. 477 (1975). The circumstances under which that right can be restricted by governmental regulation do not depend on whether the statutes are directed at a state party as opposed to the national party, but rather upon whether the state can demonstrate a compelling interest in the regulation.[4] The decisions be-

[4] To the extent that the state can demonstrate a compelling interest, a long line of decisions of this Court holds that the state can regulate state and local political parties by precisely drawn statutes

low properly applied these settled principles. Further review by this Court is accordingly neither necessary nor warranted.

B. Appellants' Arguments Regarding Justiciability and Plaintiffs' Authority to Bring Suit Are Contrary to the Record and Warrant No Further Review by this Court

Appellants urge this Court to accept jurisdiction to consider whether the decision below "constitutes anything other than an advisory opinion" (Juris. Stmt. 25) on the grounds that the challenged statutes are purportedly not in conflict with the policies of the parties and have not been challenged by the state central committees. Appellants also contend that they were improperly denied an opportunity to conduct discovery regarding plaintiffs' authority to bring suit (Juris. Stmt. 22-23). Both arguments are contrary to the record and warrant no further consideration by this Court.

1. *Justiciability*

From the very outset of this litigation, appellants have unsuccessfully asserted that the complaint fails to raise a justiciable controversy. Appellants' justiciability argument rests on their unsupported claims that the challenged statutes are in fact supported by the parties and accordingly do not substantially burden plaintiffs' First Amendment rights. The uncontroverted record below is directly to the contrary. In support of their mo-

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necessary to advance that interest. *See, e.g., Bullock* v. *Carter*, 405 U.S. 134, 145 (1972); *Lubin* v. *Panish*, 415 U.S. 709, 717-18 (1974); *Jenness* v. *Fortson*, 403 U.S. 431, 442 (1971) (upholding state law restrictions on ballot access). To the extent that the actions of state and local political parties are taken in derogation of constitutional or civil rights of party adherents or the electorate in general, they can be challenged in judicial proceedings seeking to vindicate those rights. *See, e.g., Smith* v. *Allwright*, 321 U.S. 649 (1944); *cf. Roberts* v. *United States Jaycees*, 468 U.S. 609 (1984). This appeal, of course, presents neither of these issues.

tion for summary judgment, plaintiffs submitted numerous declarations demonstrating that the parties are fundamentally opposed to Elections Code regulation of the composition of their state central committees and prohibiting their ability to endorse candidates in primary elections. As the Ninth Circuit found, these declarations establish that the plaintiffs "would reform the composition of their parties' central committees if the statutes were invalidated," and "would make preprimary endorsements if the practice were not prohibited" (App. 15a). That finding is amply supported by the record below (*see, e.g.*, Christman Dec. ¶¶ 2-5, 13-15, Add. A 2a-3a, 5a-6a; Coffey Dec. ¶ 4, Add. B. 9a; King Dec. ¶¶ 2-6, 12, Add. G 30a-31a, 33a; Post Dec. ¶¶ 2-6, 14, Add. I 38a-39a, 42a; Romero Dec. ¶¶ 2-9, Add. K 48a-50a).

Moreover, contrary to appellants' unsupported claims in this Court (Juris. Stmt. 24), the record below establishes that the Libertarian and Democratic state central committees are fully supportive of the goals of this lawsuit. The state Libertarian party was a plaintiff below; although not formally a party, the state Democratic party has indicated its intention to join the litigation at the earliest available opportunity (Kelly Dec. ¶¶ 7-9 & Ex. A, Add. F 25a-28a; *see also* Supp. Constantini Dec. ¶¶ 3-5, Add. D 15a-16a). Moreover, plaintiffs' declarations demonstrate that the state Libertarian and Democratic parties have actively lobbied the legislature in unsuccessful efforts to change what they regard to be an inappropriate regulatory scheme (Coffey Dec. ¶¶ 7-9, Add. B 9a-10a; Constantini Dec. ¶¶ 3-4, Add. C 12a-13a; Gingell Dec. ¶¶ 5-6, Add. E 21a-22a). As the Ninth Circuit recognized, the purported failure of the parties to enact rules that conflict with the challenged statutes is of no significance where it is the Elections Code itself that "compels ballot-qualified parties to adopt the statutory restrictions" (App. 17a n.17). In that respect, the statutes invalidated below are wholly unlike

those challenged in *Marchioro*, on which appellants place so much reliance in their jurisdictional statement. As noted, this Court declined to reach the First Amendment issue in *Marchioro* because, unlike this case, the party had *voluntarily* chosen the challenged organizational scheme.

As the Court of Appeals observed and appellants conveniently ignore, the very real and immediate conflict between the challenged statutes and the legitimate desire of the plaintiffs to exercise their First Amendment rights free from unconstitutional restraints is exemplified by the plight of the California Libertarian party.

> When the Libertarian party qualified for the ballot, it was forced to jettison its "preferred and natural" party organization and replace it with one already mandated for one of the existing qualified parties. After adopting the rules of the Peace and Freedom Party as the least objectionable interim model, the Libertarians drafted a body of rules specifically tailored to their party's distinctive needs. When presented to the Legislature, the proposed rules languished and died in committee. Thus, the Libertarian party has been compelled by the state to organize itself in a way considered inimical to its political interests.

(App. 24a) (citations and footnote omitted).

The only purportedly contrary evidence proffered below is the Rodda Declaration (App. 105a). That declaration does not address *unsuccessful* efforts to change Elections Code regulation of political parties, including the unique problems of the Libertarian party, but merely states that where legislative changes in the "structure and procedures of the major political parties" have occurred, they were enacted "at the request and with the concurrence of the party affected" (Rodda Dec. ¶ 6, App. 106a). The Rodda Declaration was properly characterized by the courts below as "unsupported conjecture" (App. 35a) and

"opinions . . . not based on facts, but on speculations" (App. 55a). At any event, the Rodda Declaration does not establish or imply, as appellants contend, "that the parties actually support the statutes" (Juris. Stmt. 22).

Appellants also suggest that this case fails to present a justiciable controversy because no criminal sanction attaches to preprimary endorsements by party central committees or their members (Juris. Stmt. 8-9). Significantly, this argument is not advanced as a ground for plenary review, and for good reason. The Court of Appeals roundly rejected this argument as "anomalous" in light of the "plain statutory language" of the applicable penal statutes (App. 14a n.16), which prohibit candidates and "any other person" from claiming that the candidate is the "officially endorsed candidate" of the party. Cal. Elec. Code § 29430 (App. 303a). This unambiguous statutory language is not controverted by appellants' declarations (App. 98a-104a, 125a-139a) submitted in opposition to summary judgment. The District Court noted that those declarations state at most that the criminal sanction has not been enforced *in the past*, not that it will not be invoked in the future (App. 47a-48a). Underscoring the point, when questioned at the summary judgment hearing as to whether the state was disavowing any future intention to enforce these statutes, counsel responded that "[y]ou are asking a hypothetical question that I can't really answer. All I can do is point out to you what the history of our involvement is. What our attitude has been" (Tr. of Hrg., Add. L 54a). *Cf. Abrams* v. *Reno*, 452 F. Supp. at 1168 n.3 (recognizing justiciable controversy under virtually identical facts). The trial court further noted that appellants had not disavowed their intention "to civilly enforce the challenged provisions" (App. 48a-49a). As the Court of Appeals correctly held (App. 12a-14a), this record establishes a sufficiently realistic danger of prosecution to create a justiciable case and controversy under this Court's decisions

in *Babitt* v. *United Farm Workers National Union*, 442 U.S. 289 (1979), and *Epperson* v. *Arkansas*, 393 U.S. 97 (1968).[5]

2. *Authorization*

Finally, appellants assert that this Court should accept jurisdiction to consider whether summary judgment was improper because they were purportedly denied the opportunity to conduct discovery in violation of Federal Rule of Civil Procedure 56(f) "concerning the issues of substantial infringement and standing" (Juris. Stmt. 22-24 & n.12). Appellants' Rule 56(f) argument amounts to the claim that they were precluded from developing facts and presenting legal arguments to establish that the plaintiff central committees had not obtained proper authorization from their members to bring suit (Juris. Stmt. 23 n.12). The record amply demonstrates that there is no merit to this contention.

As the case was briefed on summary judgment, it was unclear that appellants had even raised the authorization issue. Plaintiffs' purported lack of capacity to sue was not specifically pled in the answer, *cf.* Fed. R. Civ. P. 9(a) (requiring "specific negative averment" of lack of authority to sue), and was buried in a footnote in appellants' brief to the District Court (App. 74a). Although the issue had arguably been waived, *see, e.g.*, *Summers* v. *Interstate Tractor and Equipment Co.*, 466 F.2d 42, 49-50 (9th Cir. 1972), plaintiffs filed declarations in the trial court executed on behalf of each central committee plaintiff establishing that the necessary authorizations

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[5] In their listing of Questions Presented, appellants also urge that jurisdiction is barred by the Eleventh Amendment (Juris. Stmt. ii), but do not devote a single line to this argument in their brief. As the courts below properly held (App. 17a, 45a), this Court has long recognized that the Eleventh Amendment is no bar to suits like this one, which seek declaratory and injunctive relief against state officials premised on the violation of federal constitutional rights. *See, e.g., Ex Parte Young*, 209 U.S. 123 (1908).

had been obtained (App. 75a; Add. M, P, R, T, U, V, W, Y, 55a-56a, 63a-64a, 68a-69a, 72a-79a, 83a-84a).[6] Based on this evidence, the trial court entered an order finding that "plaintiff central committees and each of them have authorization and capacity to bring and maintain this lawsuit" (App. 76a). The trial court further held that "there are a number of parties to this litigation whose authorization is not in question and who have been held to have standing" (App. 78a n.2). Appellants unaccountably fail to advise this Court of these findings.[7]

When appellants resurrected the authorization issue in the Court of Appeals, further voluminous submissions, consisting of additional declarations and the bylaws and minutes of each plaintiff central committee regarding authorization, were filed in the trial court (Add. N, O, Q, S, X, Z, AA, BB, 57a-62a, 65a-67a, 70a-71a, 80a-82a, 85a-90a). Appellants then sought and were granted leave to file supplemental briefs regarding authorization (App. 86a; Add. CC-EE, 94a-123a), which were devoted pri-

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[6] Plaintiffs' declarations were submitted in response to an informal request by appellants, made just three weeks before the summary judgment hearing (App. 120a-124a). Appellants have made no effort to justify their delay in conducting timely formal discovery regarding authorization. Instead, appellants make the wholly unwarranted suggestion that they were precluded from initiating discovery before late March 1983, because they were fully occupied compiling responses to plaintiffs' written discovery, which they contend were "voluminous and had been very time consuming to locate, assemble, and produce" (Juris. Stmt. 13-14). In fact, plaintiffs' written discovery consisted of 9 interrogatories and 6 requests for admissions, and appellants' responses consisted largely of boilerplate objections and contained little substantive information.

[7] Moreover, even if there were some error with respect to these findings, which there is not, it was acquiesced in by appellants. At no time did appellants seek leave to file additional evidence regarding the authorization issue, although the trial court's order granting them additional time to respond to the summary judgment motion expressly provided that such a motion would be entertained (App. 234a).

marily to an analysis of plaintiffs' further factual submissions. Thus, at the close of briefing in the Court of Appeals, appellants had received all relevant discovery outlined in counsel's Rule 56(f) declaration (*see* App. 115a, 118a, 120a-124a) and had been afforded the opportunity to make every argument they deemed pertinent.

In the face of this record, appellants nonetheless contend that plenary review is warranted because the opinion of the Court of Appeals does not address the authorization issue (Juris. Stmt. 23 n.12). Appellants cite no authority requiring an appellate court to address every argument for affirmance or reversal made by the parties, nor should appellate courts be burdened with such a mechanical and judicially unproductive requirement. *Cf., e.g., Bowen* v. *Roy*, —— U.S. ——, 106 S. Ct. 2147, 2151 n.4 (1986) (declining to address nonmeritorious claims). The dispositive point in this case is that appellants received all discovery they contended was necessary to oppose summary judgment and were allowed to argue the merits of the fruits of that discovery on appeal. No more was required.

CONCLUSION

For all the foregoing reasons, appellees respectfully request that this Court summarily affirm the decision below or dismiss this appeal for lack of a substantial federal question.

Dated: November 17, 1986

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ADDENDUM

No. 86-434

Supreme Court, U.S.
FILED
NOV 17 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

MARCH FONG EU, Secretary of State of the State of California; JOHN K. VAN DE KAMP, Attorney General of the State of California; ARLO SMITH, District Attorney of San Francisco County; and LEO HIMMELSBACH, District Attorney of Santa Clara County,

Appellants,

v.

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE; SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE; LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE; ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE; SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE; PLACER COUNTY DEMOCRATIC CENTRAL COMMITTEE; STATE CENTRAL COMMITTEE OF THE LIBERTARIAN PARTY OF CALIFORNIA; BERT COFFEY; NANCY WALKER; LINDA POST; DOLPH ANDREWS; CAROLYN WALLACE; MARY KING; THOMAS ROMERO; MARY GINGELL; DAVID E. STURROCK; WALTER LAYSON; MARY VAIL; ROY CHRISTMAN; JAMES FAY; NORTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; SOUTHERN CALIFORNIA COMMITTEE FOR PARTY RENEWAL; and NATIONAL COMMITTEE FOR PARTY RENEWAL,

Appellees.

On Appeal from the United States Court of Appeals for the Ninth Circuit

ADDENDUM TO MOTION TO AFFIRM OR TO DISMISS

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ADDENDUM A

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed March 8, 1984]

Date: April 2, 1984
Time: 10:30 a.m.

DECLARATION OF ROY CHRISTMAN IN SUPPORT OF PLAINTIFFS' MOTION FOR A SUMMARY JUDGMENT

I, ROY CHRISTMAN, declare as follows:

1. I make this declaration in support of plaintiffs' motion for a summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a member of the Santa Clara County Democratic Central Committee (the

"County Central Committee"). I have been a member of the County Central Committee since January 1979 and served as Chair from January 1981 to January 1983. I am a member of the Democratic State Central Committee. I have been an active participant in the activities of the Democratic Party of California since 1970.

2. As a member of the County Central Committee, I would like that Committee to endorse, support, or oppose candidates for nomination in direct primary elections, including candidates running for State Senate, State Assembly, and United States House of Representatives in June 1984 and in 1986. As a member of the State Central Committee, I would like that Committee also to endorse, support, or oppose candidates running for nomination in direct primary elections, including candidates running for President, United States Senator, Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, and State Controller. I would encourage and contribute to this endorsement process if that process were not prohibited by section 11702 of the California Elections Code (the "Elections Code") and the threat of enforcement of this provision by the defendants.

3. I would also like the County Central Committee to endorse, support, or oppose candidates for school, county, and city offices, including candidates running for the County Board of Supervisors, mayor, city council, and school boards in the 1984, 1985, and 1986 elections. I would encourage and contribute to this endorsement process if that process were not prohibited by section 6, article II of the California Constitution and section 37 of the Elections Code and the threat of enforcement of these provisions by the defendants.

4. I would have favored endorsing Keith Raffel in the 1982 June primary race that determined the Democratic nominee for the 12th Congressional District. Mr. Raffel

was a young, bright, and articulate Democrat, experienced in Washington, D.C. politics. It was my belief that of all the primary candidates, only Raffel would have seriously challenged the Republican candidate. Because it was not able to endorse or support Raffel, the County Central Committee was not able to express its views regarding Raffel's superior qualifications, nor was it able to work to select and develop the candidate that we believed would have been best for the party. This contributed to Raffel's loss in the primary.

5. As for nonpartisan elections, the County Central Committee would have endorsed Anita Duarte in the 1983 race for the County Board of Supervisors. We did not do so because that would have been in violation of the Elections Code and the California Constitution.

6. As these examples demonstrate, the County Central Committee's inability to endorse candidates severely hinders it in performing some of its most vital functions. It cannot educate the public on a candidate's position on the issues, nor can it recruit or develop candidates for office. The latter function is particularly crucial right now in the 22nd Assembly District, where no Democrat has registered or is likely to register to run in the June primary. Because the County Central Committee cannot support any candidate in this race, it cannot recruit anyone to run in the primary. The voters in the 22nd District will, therefore, have no choice in the November general election. Such a result undermines the very basis of our democratic form of government.

7. Numerous unofficial groups regularly endorse candidates in primary and nonpartisan elections in Santa Clara County. These groups include the National Women's Political Caucus of Santa Clara County, the Loma Prieta Chapter of the Sierra Club, labor organizations such as the Santa Clara County Central Labor Council and the California Teachers' Association, ad hoc political groups such as Associated Homeowners of Saratoga and

the West Valley Community College Review Council, and newspapers, such as the San Jose Mercury News. True and correct copies of endorsement materials distributed by some of these groups are appended hereto as Exhibit A.

8. Allowing these organizations to endorse, but forbidding that right to our County Central Committee makes no sense. All of the organizations mentioned in paragraph 7 are private interest groups. Their endorsement decisions are made at closed meetings and are based on a narrow range of issues. In contrast, the County Central Committee holds open meetings. Its members are elected by the voters, and its decisions reflect a broad range of interests. Our endorsement would, therefore, be much more democratic and meaningful. Moreover, if our government is going to be responsible to the people, voters must be given as much information as possible. By censoring the County Central Committee's right to express its opinion, the state is denying voters a valuable and basic piece of information.

9. In many school, county, and city elections, the race is between a candidate whom people know is a Republican and a candidate whom people know is a Democrat. In recent San Jose and Santa Clara mayoral races, for example, it was clear to any active and informed voter that they were faced with a contest between a Republican and a Democrat.

10. Allowing anyone to endorse except for the County Central Committee has also led to voter confusion. Misleading slate mailers have been distributed that suggest the County Central Committee has endorsed a candidate when, in fact, no such endorsement had, or indeed could have been issued. One such mailer, distributed in the 1982 general election campaign, stated that it was a "Democratic Voter Guide." Because I was then Chair of the County Central Committee, the press asked me to comment upon this mailer. I told them that I believed

it was an improper step by the candidate who distributed it, because it could mislead voters into believing an official endorsement had been given. A true and correct copy of this mailer is appended hereto as Exhibit B. If the County Central Committee were allowed to endorse, we could fill the vacuum presently occupied by such mailers and reduce voter confusion.

11. Many people have called to ask me who the County Central Committee is supporting in given races. I always try to tell them something about the candidates, but I am also forced to say that the County Central Committee is prohibited by law from endorsing or supporting such candidates.

12. I became a member of the County Central Committee because I shared the political beliefs of the other members of that organization. I thought that the County Central Committee could advance these shared political beliefs far more effectively than I could as a single individual. My individual endorsement is worth far less than the collective endorsement of the County Central Committee as a whole. Since the Committee cannot endorse in primary or nonpartisan campaigns, our whole purpose in associating together has been frustrated.

13. Our County Central Committee would adopt more flexible rules regulating the time and place of our meetings than those contained in sections 8920 and 8921 of the Elections Code. Other than our first meeting, we regularly meet in a location other than the County Courthouse, with no adverse effects. Having to hold our first meeting in the Courthouse has caused problems in the past. For example, one year we had to delay our meeting because one member could not find the building.

14. As a member of the Democratic State Central Committee and an active member of the Democratic Party, I would also like to abolish sections 8660, 8661, 8663, 8664, 8665, of the Elections Code, to allow that Committee to control the method of selecting its own

members. A party should be allowed to determine how to select members of its central policymaking body, the body that controls the internal affairs of the organization. Currently, we are not allowed to choose the selection method that would best meet the needs of our party.

15. In addition, I would favor the adoption of more flexible rules regulating the time and place of State Central Committee meetings contained in section 8710 of the Elections Code. Cities should be able to compete for the meeting. The meeting attracts publicity and would bolster the strength of the local party organization in the city where it is held. As it is, we must meet only in Sacramento, depriving all other California cities and local party organizations of the benefits the meeting offers.

16. Neither I, nor the County Central Committee, nor the State Central Committee, has sought to disobey these rules mentioned in paragraphs 13 to 15 because of the threat of enforcement of these provisions by the defendants.

17. I am familar with an October 1983 poll conducted and published by The Field Institute which stated that 85% of all adults interviewed said they followed events in government and public affairs, and 76% agreed that there are important differences in what the Democratic and Republican Parties stand for.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at San Francisco, California, this 6th day of March, 1984.

/s/ Roy Christman
ROY CHRISTMAN

[Proof of Service Omitted]

ADDENDUM B

[Designation of Council Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed March 5, 1984]

Date: April 2, 1984
Time: 10:30 a.m.

DECLARATION OF BERT COFFEY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, BERT COFFEY, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I was the Chairperson of the Democratic State Central Committee (the "State Central Committee") from 1977 to 1979. I am currently a member of the Executive Committee of the State

Central Committee and have held that position since 1982. I have been an active member of the Democratic Party since 1948, and have held various party offices, including the Northern Chair of the State Central Committee (1975-77), Chair of the Contra Costa County Democratic Central Committee (1968-70, and 1980-82), member of the Democratic National Committee (1980-present), and member of the Hunt Commission, which was formed to review and write the rules governing the 1984 Democratic National Convention (1983).

2. It is crucial for the Democratic Party to be allowed to endorse, support, or oppose candidates for public office. Without that ability, the Party is a powerless, ineffective organization. Shortly after I was elected Chair of the State Central Committee I approached a person who traditionally had been very generous in making large contributions to Democratic candidates. Thinking that he might be willing to contribute to the Party, I asked him if he might want to donate some money. He laughed, turned to me and said that I was crazy, that he "gave direct." He meant that he gave his money directly to the candidates and not to the Party. This individual recognized that without the ability to work for the election or defeat of candidates, the Party serves no important function.

3. Because the Party is so severely regulated, the Party organization is unable to attract many talented and interested people who would otherwise have joined the Party. Deprived of quality personnel and restricted from endorsing candidates, the Party is so weakened that it cannot fulfill the essential roles it must play in our democracy. One of these roles is holding elected officials accountable to the citizenry. Without a strong party system, wealthy individuals and special interest groups have an inordinate amount of control over elected officials. Another of the roles that a party should play is pursuing and advocating the political positions which I and other

party adherents wish to espouse. Because of its inability to endorse candidates and its resulting weakness, the Party cannot effectively serve this role.

4. I would therefore like the State Central Committee and the County Central Committee to endorse, support, or oppose candidates running for nomination in direct primary elections and would encourage and contribute to this endorsement process if that process were not prohibited by section 11702 of the California Elections Code ("the Elections Code") and the threat of enforcement of this provision by the defendants. I would also like the County Central Committees to endorse, support, or oppose candidates for school, county and city offices and would encourage and contribute to this endorsement process if that process were not prohibited by section 6, article II of the California Constitution and section 37 of the Elections Code and the threat of enforcement of these provisions by the defendants.

5. As Chair of the State Central Committee, I was aware of the attitudes and preferences of the Party's members as to political issues. I carefully considered and attempted to accommodate the wishes of the majority of these members in carrying out my duties as Chair.

6. It is demonstrably not true that party endorsements will predetermine the victor in a political election. There have been countless cases in the history of American politics where the endorsees of political parties have lost. In general, voters are independent and will not automatically rubber stamp the party endorsee.

7. During my term as Chair of the State Central Committee, I was heavily involved in the California Democratic Party's effort to reform the statutes governing its organizational structure. Before 1979, the Party had tried for twenty years to persuade the State Legislature to change the rules governing the selection of members to the State Central Committee. The Party was dis-

satisfied because the vast majority of State Central Committee members were party nominees and their appointees, leaving only a few seats for the County Central Committees. Time after time, however, the Legislature had rebuffed any effort to reform this unrepresentative system.

8. When I became Chair, a series of hearings were conducted to determine the attitude of the Party membership towards reforming the method of selecting members to the State Central Committee. Other members of the Party leadership and I presented a proposal based upon these meetings to the legislature. Although the Legislature finally agreed to change the rules, they did so only after a protracted, hard fought battle and even then substantially deviated from the Party's proposal. I am still not satisfied with the statutorily prescribed method of selecting the State Central Committee, as set forth in sections 8660, 8661, 8663, 8664, 8665, 8667, and 8669 of the Elections Code. They still do not provide for adequate representation of the County Central Committees on the Democratic Party's central policy making body.

9. Even to the extent that they improved the rules, the 1979 reforms could be erased at any time by the Legislature. A bill proposed last year by Assemblyman Richard Floyd, A.B. 1977, would have done that, returning the Party in large part to the unsatisfactory pre-1979 method of selecting members to the State Central Committee. This illustrates the danger of putting the Democratic Party's constitutional rights into the hands of the Legislature.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Richmond, California, this 3rd day of March, 1984.

/s/ Bert Coffey
BERT COFFEY

ADDENDUM C

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed March 5, 1984]

Date: April 2, 1984
Time: 10:30 a.m.

DECLARATION OF EDMOND COSTANTINI IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, EDMOND COSTANTINI, declare as follows:

1. I am a member of both the State Central Committee of the Democratic Party of California and of that body's Executive Board. I have been a member of both organizations since 1978. I also serve as chair of the California Credentials Committee. I have been an active member of the Democratic Party since 1960.

2. As chair of the Credentials Committee, I preside over meetings held to consider whether individuals should be credentialed as members of the State Central Committee. In 1980, the credentials of Tom Metzger were challenged, placing the matter before our Committee. Tom Metzger had been a Democratic nominee for Congress from the San Diego area, but had been defeated by Representative Clair Burgener, a Republican. Mr. Metzger received the nomination even though he was a Grand Dragon of the Ku Klux Klan and stood for policies abhorred by the Democratic Party and its members. Because of the provisions of the Elections Code, the Democratic Party could not promote the candidacy of a more representative Democrat or argue to the electorate that Mr. Metzger's program and ideas should be rejected. The Credentials Committee did not credential Mr. Metzger, a position affirmed by the whole State Central Committee.

3. I recently learned that in the spring of 1983 Assemblyman Richard Floyd introduced a bill into the Assembly, A.B. 1977, that would have changed the method of selecting the members of the Democratic State Central Committee, forcing the Party to revert in large part to the system that had existed before 1979. A true and correct copy of that bill as it was originally proposed is appended hereto as Exhibit A. The State Party had long deliberated over the matter of internal reform—a process in which I was intimately involved—and, after the conclusion of those deliberations, had succeeded with considerable difficulty in persuading the legislature to abandon the pre-1979 structure. The Party advocated reform because the old system did not provide for the fair representation of County Central Committees or grass roots activists on the State Central Committee. In short, it did not meet the needs of the party. It was therefore distressing to learn that this bill, A.B. 1977, had been introduced into the legislature without consultation with the Party and, as far as I know, without

the knowledge of the official Party leadership. The Party has avoided being injured by this misconceived bill because of legislative amendments that have struck these offending provisions.

4. The danger of allowing the Legislature to have such extensive control over a political party's structure is well illustrated by this example. Only the party can best judge its needs and thus best structure its organization. As long as the legislature has the power to change the rules governing the internal affairs of a political party at will, the health and welfare of that party is in constant jeopardy.

5. Late in 1983, I learned that the California Fair Political Practices Commission had directed its staff to prepare a report on slate mailings in the 1982 primary campaigns. I contacted a member of the staff to request a copy of that report, which that person later gave me. It identifies a number of problems associated with slate mailings which affect the health and well-being of our political system. I agree with the report's conclusion on page 55 that these problems could be ameliorated by allowing "party endorsements in primary campaigns so as to offset the 'growing power' of slate mailing." I have appended hereto as Exhibit B a true and correct copy of this report.

6. Also appended hereto, as Exhibit C, is a true and correct copy of a slate mailer distributed by Willard Murray in the Los Angeles area in June 1982.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Davis, California, this 29th day of February, 1984.

/s/ Edmond Costantini
PROFESSOR EDMOND COSTANTINI

[Exhibits A Through C Omitted]

ADDENDUM D

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 2, 1984]

Date: April 9, 1984
Time: 10:30 a.m.

SUPPLEMENTAL DECLARATION OF EDMOND COSTANTINI IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, EDMOND COSTANTINI, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a member of both the State Central Committee of the Democratic Party of California ("State Central Committee") and of that body's Executive Board.

I have been a member of both organizations since 1978. I also serve as chair of the Credentials Committee of the State Central Committee. I have been an active member of the California Democratic Party since 1960.

2. I hold a Ph.D. in political science from the University of California at Berkeley, and have been a professor of Political Science at the University of California at Davis since 1964. My areas of expertise are political parties, political leadership, and public opinion.

3. On October 15, 1983, I attended a meeting of the Executive Board of the State Central Committee which was held in San Diego, California.

4. At that meeting, I, along with other members of the Executive Board of the State Central Committee, presented to the full Executive Board a resolution supporting the above-captioned lawsuit. The text of the resolution, as it was actually presented, is contained in Exhibit A to this Declaration. The resolution passed by a voice vote without audible dissent. This resolution was presented, and the vote was taken, pursuant to the rules applicable to the Executive Board. For example, we collected the signatures of at least fifty (50) Executive Board members on behalf of the resolution before we presented it for the consideration of the full Board. (*See* Article VIII, Section 7(d) of the By-Laws of the Democratic State Central Committee, attached as Exhibit 2 to Defendants' Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of Defendants' Motions to Dismiss and for Summary Judgment.)

5. The resolution recognized that the Party is "subject to excessive governmental regulation, with state laws prescribing in extraordinary detail how they are to be organized, forbidding them to endorse candidates entered in their own primaries; and preventing them from endorsing candidates for local elective office . . . ." and

therefore resolved that "[t]he Executive Board of the California Democratic Party supports, in principle, the aforementioned suit. . . ."

6. The question of the State Central Committee joining this lawsuit as a co-plaintiff was not put before the Executive Board.

7. I am not a named plaintiff in this lawsuit. However, I believe strongly in the objectives of all three causes of action of this lawsuit.

8. The right of political party organizations such as county central committees to endorse political candidates, which right is sought in this lawsuit, is essential to the vitality of the political parties. The ability of the political party organizations to speak out is a necessary element of the public debate and free exchange of ideas which is a principle on which our government is founded.

9. Political parties thrive on the competition of ideas, the clash of ambitions, and the conflict of interests characteristic of all robust democratic institutions. One of their special functions historically and worldwide is that they institutionalize conflict among the citizenry, and that they provide that citizenry an organizational forum in which conflict can be expressed and resolved peacefully so that common purposes can be more effectively pursued.

10. Contests for a party's endorsements are indeed occasions when the various forces of conflict may come into play. It is by no means self-evident that, as a general rule, suppressing those forces within party organizations leads them to become healthier and more vital places or more attractive vehicles for public participation in the process of self government. To the contrary, suppressing the competition among ideas and among candidates would destroy the vitality and meaning of the party organizations.

11. In a given instance, prudence might dictate that a county central committee not become involved in a particular primary or local election contest. Plaintiffs' lawsuit would in no way prevent official party organizations from exercising such self-restraint if for some reason the organization believed such restraint to be in its best interests. In other words, the members of those organizations could find on their own accord and on the basis of their own intelligence that an endorsement in a given instance would be politically unwise or imprudent —a conclusion which defendants paternalistically claim the State of California should reach for them in *every* instance.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Davis, California, this 30th day of March, 1984.

/s/ Edmond Costantini
EDMOND COSTANTINI

EXHIBIT A

RESOLUTION FOR CONSIDERATION AT DSCC EXECUTIVE BOARD MEETING

October 15, 1983

WHEREAS: California's Political Parties are subject to excessive governmental regulation, with state laws prescribing in extraordinary detail how they are to be organized, forbidding them to endorse candidates entered in their own primaries; and preventing them from endorsing candidates for local elective office;

WHEREAS: a number of court decisions across the nation suggest that this excessive state regulation of parties violates the First Amendment to the U.S. Constitution;

WHEREAS: the California Committee on Party Renewal—a multiparty group of party leaders and other interested persons dedicated to the reinvigoration of political parties—is filing suit in federal court to end excessive governmental intrusion into party matters;

WHEREAS: one of the state's most distinguished trial lawyers—James Brosnahan of the prestigious San Francisco firm of Morrison & Foerster—has agreed to serve on a pro bono basis as counsel in this effort;

WHEREAS: several Democratic (and other) organizations and party leaders have already agreed to serve as colitigants—including, for example, the Democratic County Committees in the following counties: San Francisco; Alameda; Los Angeles; Santa Clara; Solano.

AND WHEREAS: winning the suit will not require parties to reorganize or to endorse in primaries and local elections, but will only allow them to make decisions on these matters of their own accord;

THEREFORE, BE IT RESOLVED THAT:

The Executive Board of the California Democratic Party supports, in principle, the aforementioned suit;

THEREFORE, BE IT FURTHER RESOLVED THAT:

The State Party Chair bring these matters to the attention of Democratic Party Leaders in the Legislature and present them with an opportunity to offer legislative input regarding the aforementioned suit; and,

THEREFORE, BE IT FURTHER RESOLVED THAT:

If, because of the filing of the aforementioned suit, it becomes necessary or advisable for the State Party to come to a decision on this matter prior to the February 1984 State Party Convention, the State Party officers are delegated the responsibility for determining whether the Party shall join the suit as co-plaintiff.

ADDENDUM E

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed March 5, 1984]

Date: April 2, 1984
Time: 10:30 a.m.

DECLARATION OF MARY GINGELL IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, MARY GINGELL, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a member of the State Central Committee of the Libertarian Party of California and serve on the Executive Committee of

that body. I have been a member of the State Central Committee since November 1981 and served as Chair from August 1982 to February 1984. I have been an active participant in the activities of the Libertarian Party of California since June 1981.

3. The organizations of the Libertarian Party have endorsed candidates running for school, county, or city offices in the past, including candidates running for Mayor of San Francisco, Mayor of Los Angeles, San Francisco County Board of Supervisors, Santa Cruz County Board of Supervisors, Palo Alto School Board, and Santa Barbara School Board.

4. The ability of the Libertarian Party organization to endorse candidates is crucial. Ours is a small, relatively young party. We must be free to recruit and train strong, capable candidates in primary races if we are to develop as a party. Only by being free to support primary candidates for partisan office can we hope to accomplish this objective. In school, county, and city elections, it is important for our voice to be heard, as our opinions are not being expressed by other unofficial organizations. If we are silenced, then the electorate is deprived of the Libertarian point of view.

5. The Libertarian Party of California was not formed until 1972. In 1980 we became a qualified party, governed by the provisions of the California Elections Code, and entitled to participate in primary elections. Before 1980, our party had organized itself by regions, not counties. When we became a qualified party, however, we were forced by the provisions of the Elections Code to change our structure and our internal party rules, including a change to an organization based on counties. These provisions stated that we had to abide by the detailed statutory provisions governing the Republican Party, the Democratic Party, the American Independent Party, or the Peace and Freedom Party, all of which have goals and concerns different from those of the Lib-

ertarian Party. Although we selected the rules of the Peace and Freedom Party as the best alternative, we were still burdened by having to establish a totally new statewide organization that differed from our preferred and natural party structure.

6. The Libertarian Party has unsuccessfully tried to persuade the State Legislature to enact legislation specifically tailored to our organizational needs so that we would not have to operate under the burdensome rules governing the Peace and Freedom Party. In 1981, a bill that would have accomplished that goal was introduced by Assemblyman Robert Naylor. The Assembly Elections Committee considered this bill, but did not pass it, illustrating the danger of leaving in the Legislature the power to regulate a party organization's internal affairs.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Costa Mesa, California, this 29 day of February, 1984.

/s/ Mary T. Gingell
MARY GINGELL

ADDENDUM F

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs/Appellees,
v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants/Appellants.

[Filed January 16, 1985]

DECLARATION OF PETER D. KELLY

I, PETER D. KELLY, declare as follows:

1. I am and have been since February 1, 1983, the State Chair of the California Democratic Party. This is a two-year position. I am an attorney by profession, and have my law offices in the City of Los Angeles. If called as a witness, I could testify competently to the matters herein.

2. The Democratic State Central Committee is the official governing body of the Democratic Party of California, as provided in Elections Code § 8777.

3. The by-laws of the Democratic State Central Committee provide that the State Chair shall be the principal

executive officer and the official spokesman of the California Democratic Party. The by-laws also provide that the State Chair shall do everything necessary to carry into effect the purposes of this organization.

4. The by-laws further provide that there shall be an Executive Board which shall have all the powers and duties of the Democratic State Central Committee when it is not in actual session.

5. The membership of the Executive Board consists of the following members of the State Central Committee:

(a) The United States Senators;

(b) The Governor, Lieutenant Governor, Treasurer, Controller, Attorney General, Secretary of State and all members of the State Board of Equalization;

(c) Two members of the House of Representatives, each of whom shall be selected by the members of the House of Representatives on the State Central Committee;

(d) Two members of the State Assembly, each of whom shall be selected by the members of the Assembly on the State Central Committee;

(e) Two members of the State Senate, each of whom shall be selected by the members of the State Senate on the State Central Committee;

(f) One County Central Committee representative elected for each 100,000 registered Democrats or portion thereof resident in each county;

(g) All Assembly District Representatives;

(h) All National Committee Members of the Democratic Party;

(i) All officers and immediate past officers of the State Central Committee;

(j) The president of the California Democratic Council and of the California Federation of Young Democrats;

(k) The chair of [sic] co-chairs of each Standing Committee of the State Central Committee; and

(l) The chair of each special Caucus officially recognized by the State Central Committee.

6. On December 8, 1984, the Executive Board, pursuant to the Democratic State Central Committee bylaws, held its last quarterly meeting of 1984 in Los Angeles, California. I was present at and presided over this meeting.

7. At the December 8 meeting, a resolution was presented and adopted regarding the Democratic State Central Committee's support of, and participation in, the lawsuit entitled *San Francisco County Democratic Central Committee, et al.* v. *March Fong Eu, et al.* A true and correct copy of said resolution is attached hereto as Exhibit A.

8. The resolution provides, in part, that the State Central Committee supports said lawsuit in all of its causes of action, affirms its principles and goals, and wishes to assist in its prosecution.

9. In accordance with the December 8 resolution, I am authorized to represent that the Democratic State Central Committee, at an appropriate juncture, will seek to be joined as a plaintiff in this lawsuit with respect to those portions of the third cause of action as to which final judgment has not been entered by this Court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of January, 1985 at Los Angeles, California.

/s/ Peter D. Kelly
PETER D. KELLY
State Chair
California Democratic Party

EXHIBIT A

RESOLUTION FOR CONSIDERATION AT DEMOCRATIC STATE CENTRAL COMMITTEE EXECUTIVE BOARD MEETING DECEMBER 8, 1984

WHEREAS: California political parties are subject to state laws severely and excessively regulating their political speech and internal affairs;

WHEREAS: Certain of these state laws forbid political party organizations from endorsing, supporting, or opposing candidates entered in their own primaries or running for local elective office, while other state laws prescribe in extraordinary detail how political party organizations are to organize and govern themselves;

WHEREAS: These state laws substantially burden the fundamental freedoms of speech and association of California political party organizations and their members, which freedoms are guaranteed by the First Amendment to the United States Constitution;

WHEREAS: A lawsuit entitled *San Francisco County Democratic Central Committee, et al.* v. *March Fong Eu, et al.* was filed in the United States District Court for the Northern District of California in November 1983 challenging the validity of these state laws;

WHEREAS: Said lawsuit sets forth three causes of action, the first challenging the restrictions upon political party organizations' ability to endorse, support, or oppose candidates running in party primaries; the second, challenging the restrictions upon political party organizations' ability to endorse, support, or oppose candidates running for election to school, county, and city offices; and the third, challenging certain restrictions on how political party organizations may organize and govern themselves;

WHEREAS: Plaintiffs in this lawsuit currently include the Democratic County Central Committees from San

Francisco, Los Angeles, Alameda, Santa Clara, and Solano Counties; the San Francisco County Republican Central Committee, the State Central Committee of the California Libertarian Party; the chairs or former chairs of various of these central committees; as well as other prominent persons active in California politics;

WHEREAS: Plaintiffs in this lawsuit prevailed in United States District Court with respect to the first cause of action and substantial portions of the third cause of action;

WHEREAS: The District Court's decision with respect to the first and third causes of action has been appealed by defendants, and the matter is presently pending in the Ninth Circuit Court of Appeals;

WHEREAS: The District Court abstained with respect to the second cause of action, pending a ruling by the California Supreme Court in a case known as *Unger, et al.* v. *Superior Court* (*Unger II*);

WHEREAS: The California Democratic State Central Committee's Executive Board resolved on October 15, 1983 to support, in principle, this lawsuit;

WHEREAS: Pursuant to Article VIII, section 1 of the by-laws of the California Democratic Party, the Executive Board of the Democratic State Central Committee has all the powers and duties of the Democratic State Central Committee when, as now, that body is not in session;

AND WHEREAS: The California Democratic State Central Committee enthusiastically supports this lawsuit in all of its causes of action, affirms its principles and goals, and wishes to assist in its prosecution;

THEREFORE BE IT RESOLVED THAT: The State Party Chair has authority to act on behalf of the State Party, in consultation with the State Party officers, to

support and assist in the prosecution of the lawsuit entitled *San Francisco County Democratic Central Committee, et al.* v. *March Fong Eu, et al.* and, without limiting this authority, shall be given specific authority to authorize (1) the joining of the California Democratic State Central Committee and/or its Executive Board as a co-plaintiff in this suit, at such time and in such manner as the Chair deems appropriate and feasible; (2) the filing of amicus curiae briefs or other appropriate legal papers with the courts on behalf of the Democratic State Central Committee and/or its Executtive Board to set forth this body's position regarding this lawsuit and to make any appropriate legal arguments in support thereof; (3) the filing of sworn declarations testifying to these actions and to the full support of this body for this lawsuit; (4) the issuance of public statements of support for this lawsuit; and (5) the taking of any other appropriate actions consistent with this resolution.

ADDENDUM G

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed March 5, 1984]

Date: April 2, 1984
Time: 10:30 a.m.

DECLARATION OF MARY KING IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, MARY KING, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the Alameda County Democratic Central Committee (the "County Central Committee"). I have been a member of the County Central Committee since 1979 and have served as Chair since January, 1983. I have been an active participant in the activities of the Democratic Party of California since 1976.

2. The County Central Committee would endorse, support, or oppose candidates for nomination in direct primary elections, including candidates running for State Senate, State Assembly, and United States House of Representatives in June 1984 and in 1986, but for the existence of section 11702 of the California Elections Code (the "Elections Code") and the threat of enforcement of this provision by the defendants.

3. The County Central Committee would endorse, support, or oppose candidates for nonpartisan offices, including candidates running for the County Board of Supervisors, Sheriff, District Attorney, County Clerk, and County Treasurer in the 1984 and 1986 elections, but for the existence of section 6, article II of the California Constitution and section 37 of the Elections Code and the threat of enforcement of these provisions by the defendants.

4. Before the California Courts began holding that the Elections Code and the California Constitution prohibited the endorsement of candidates for nonpartisan office, we endorsed such candidates, including individuals running for the Oakland City Council and for Mayor of Oakland. We believed we were not making these elections "partisan" merely by issuing such endorsement. We did not control who could run, nor did our endorsement or the endorsee's party affiliation appeal on the ballot.

5. One of the main functions of the County Central Committee is to inform Alameda County voters of the Democratic Party platform, the party's proposals for change, and its positions on other significant issues. Another of its main functions is to ensure that the party leadership, including elected Democratic officials, endorses the beliefs and positions of the Democratic Party of California. Because the County Central Committee is not allowed to endorse, support, or oppose candidates in direct primary elections or in elections for school, county, or city posts, it cannot educate the public about a candi-

date's position on issues, nor can it work to ensure that Party leaders are committed to the goals and ideals of the California Democratic Party.

6. The County Central Committee's inability to perform its educational function has greatly weakened our party and has disadvantaged the electorate. For example, our Committee would like to but has been unable to oppose a man by the name of Bob Reeder, a member of the Fremont City Council. Mr. Reeder is a registered Democrat, a fact he has publicized widely. Mr. Reeder has been quoted as saying that he registered as a Democrat because it was a wise political move, given that most of his constituents were members of that party. In fact, we believe that Mr. Reeder's positions on political issues are completely antithetical to the positions of our party. Because we are not allowed to speak out in city elections, we cannot set the record straight and inform the voters of what we believe the facts to be. Thus, Mr. Reeder, by default, is able to use our party label to his advantage.

7. Numerous unofficial groups regularly endorse candidates in primary and nonpartisan elections in Alameda County. These groups include: (a) various political clubs affiliated with the Democratic Party, including the Hayward Demos, the MGO (Montclair Greater Oakland) Democratic Club, the Niagra Democratic Club, the Berkeley Democratic Club, and the Muleskinners Democratic Club; (b) labor organizations, such as the Communication Workers of America, the AFL-CIO, and United Teachers of Oakland; (c) political action committees such as the Berkeley Citizens Action Committee; (d) other politically active associations, such as the Fremont Democratic Forum and the National Women's Political Caucus; and (e) newspapers, such as the Daily Review, the Oakland Tribune, and the San Francisco Newspapers.

8. In contrast to the materials distributed by these groups, which contain endorsements for both partisan primary candidates and candidates for school, county,

and city offices, the County Central Committee can issue mailers containing endorsements only for Propositions or Initiatives.

9. As demonstrated in paragraph 7, large numbers of individuals and groups, with widely varying political viewpoints, exercise their freedom to criticize or support candidates in Alameda County. Yet, the County Central Committee, which is the supposed leader of the Democratic Party in Alameda County, and which has among its membership (as does the Republican County Central Committee) some of the most informed and politically aware citizens, cannot say anything. This is a strange and anomalous result.

10. I became a member of the County Central Committee because I shared the political beliefs of the other members of that organization. I thought that the County Central Committee could advance these shared political beliefs far more effectively than I could as a single individual. One of the key methods available to our County Central Committee to further its shared beliefs is the issuance of endorsements and the public support of political candidates. Even as chairperson of that Committee, my individual endorsement is worth far less than the collective endorsement of the County Central Committee as a whole. Since the Committee cannot endorse in direct primary elections or in elections for school, county, or city officers, our whole purpose in associating together has been frustrated.

11. Our County Central Committee is already engaging in activities in preparation for the June 1984 primary and the November 1984 general election. If our County Central Committee were to issue endorsements in the June 1984 primary races, we would have to begin the endorsement process sometime in April. The period of time between April and June would be spent in distributing notices to the candidates of our intent to endorse, evaluating the candidates, raising money to fund

a slate card or mailer, and printing and distributing these endorsement materials.

12. Our County Central Committee would adopt more flexible rules regulating the time and place of our meetings than those contained in sections 8920 and 8921 of the Elections Code. The County Central Committee has not sought to disobey these rules because of the threat of enforcement of these provisions by the defendants.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Oakland, California, this 29 day of February, 1984.

/s/ Mary King
MARY KING

ADDENDUM H

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 9, 1984]

Date: April 9, 1984
Time: 10:30 a.m.

SUPPLEMENTAL DECLARATION OF WALTER W. LAYSON IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, WALTER W. LAYSON, declare as follows:

1. I make this supplemental declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a resident of Contra Costa County, California and was, from

January 1975 to December 1978 and from January 1983 to October 1983 an elected member, and from 1979 to 1982 an appointed member of the Contra Costa County Republican Central Committee ("County Central Committee"). I have been a registered Republican since 1960 and in 1977-78 was a candidate for nomination in the 7th Congressional District of Contra Costa County. I have chaired GOP Congressional research teams, served as a political advisor in four Congressional campaigns, and was GOP county precinct chair in Contra Costa County from 1975 to 1976.

2. At the present time, I am running uncontested for the Republican nomination in the 7th State Senate District for 1984 and thus expect to be the official nominee of my party.

3. As a candidate for nomination in a Party primary, the restrictions placed on the State and County Central Committees by section 11702 of the Elections Code, forbidding the Committees from endorsing, supporting, or opposing candidates in direct party primary elections, has injured me directly.

4. Section 11702 prevents the County and State Central Committees from helping to pay my filing fee or financially to support my candidacy in any way. They cannot contribute in-kind services, such as secretarial or computer help, until after the June primary. Nor can they endorse me, which would publicize my campaign and improve upon both their and my credibility.

5. Because I am running unopposed, it is unlikely that party factionalism could develop within the County Central Committee over the endorsement of my candidacy.

6. The County Central Committee's endorsement would also have strongly benefitted me in my 1978 campaign for the Party's nomination in the 7th Congressional District.

7. In my long experience in the California Republican Party, I have found that the candidates, not the County Central Committees, run general election campaigns. Because of the complained-of provisions, the County Central Committees are too weak to manage this task. Hence, the County Central Committees have no actual or operational control over the candidate's campaign organization.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, California, this 9th day of April, 1984.

/s/ Walter W. Layson
WALTER W. LAYSON

ADDENDUM I

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed March 5, 1984]

Date: April 2, 1984
Time: 10:30 a.m.

DECLARATION OF LINDA POST IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, LINDA POST, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the San Francisco County Democratic Central Committee (the "County Central Committee"). I have been

a member of the County Central Committee since 1980 and have served as Chair since January, 1983. I have been an active participant in the activities of the Democratic Party of California since 1975, and have joined many unofficial Democratic clubs. From 1980 to 1982, I was a member of the Executive Committee of the Democratic State Central Committee.

2. The County Central Committee would endorse, support, or oppose candidates for nomination in direct primary elections, including candidates running for State Senate, State Assembly, and United States House of Representatives in June 1984 and in 1986, but for the existence of section 11702 of the California Elections Code (the "Elections Code") and the threat of enforcement of this provision by the defendants. In addition, as a voter, a concerned citizen, and an active member of the Democratic Party, I would like the State Central Committee to be able to endorse, support, or oppose candidates in direct primary elections, including candidates running for Governor, Lieutenant Governor, Treasurer, Controller, Secretary of State, and Attorney General. I would not only greatly benefit from knowing the position of the State Central Committee in these elections, I would also encourage and contribute to this endorsement process if that process were not prohibited by the existence of section 11702 and the threat of enforcement of this provision by the defendants.

3. The County Central Committee would endorse, support, or oppose candidates for school, county, or city offices, including candidates running for the County Board of Supervisors, BART Board, and Board of Education in the 1984 and 1986 elections, and for City Treasurer and City Attorney in 1985, but for the existence of section 6, article II of the California Constitution and section 37 of the Elections Code and the threat of enforcement of these provisions by the defendants.

4. Every year that I have been a member of the County Central Committee, someone has suggested that the County Central Committee endorse or otherwise support candidates in direct party primary and school, county, or city elections. The County Central Committee discusses this matter, and invariably concludes that it will not issue such endorsements or supoprt or oppose any candidate in these races because of the threat of enforcement by the defendants or others.

5. Before the California Courts began holding that the Elections Code and the California Constitution prohibited political parties from endorsing candidates running for nonpartisan office, we endorsed such candidates, including individuals running for Mayor, the County Board of Supervisors and District Attorney. We believed that merely by issuing endorsements, we were not making the election "partisan." We did not control who could run, nor did our endorsement or the endorsed candidate's party affiliation appear on the ballot.

6. One of the main functions of the County Central Committee and the State Central Committee is to inform voters of the Democratic Party platform, the party's proposals for change, and their positions on other significant issues. Another of their main functions is to ensure that the Party leadership, including elected officials, is responsive to the beliefs and positions of the members of the Democratic Party of California. Because the County Central Committee is not allowed to endorse, support, or oppose candidates in direct party primary or school, county, and city elections, it cannot educate the public about a candidate's position on issues, nor can it work to ensure that the Party leadership, including elected officials, are held accountable to the members of the California Democratic Party.

7. Numerous groups regularly endorse candidates in direct party primary and school, county, and city elec-

tions in San Francisco. These groups include: (a) various political clubs affiliated with the Democratic Party, including the Chinese American Democratic Club, Inc., the Harvey Milk Gay-Lesbian Democratic Club, the Alice B. Toklas Lesbian/Gay Democratic Club, District One Political Action, the Nihonmachi Democratic Club, and the District 8 Democratic Club (true and correct copies of materials distributed by the first four of these groups is appended to this declaration as Exhibit A); (b) other unofficial ad hoc political groups affiliated with the Democratic Party, including United Democrats '82 (a true and correct copy of the mailer distributed by this organization is appended to this declaration as Exhibit B); (c) labor organizations such as San Francisco C.O.P.E. (Committee on Political Education), the political arm of the AFL-CIO (a true and correct copy of a mailer distributed by this organization is appended to this declaration as Exhibit C); (d) other politically active associations, such as the Frederick Douglass Symposium (true and correct copies of a mailer from this organization is appended to this declaration as Exhibit D); (e) newspapers, such as the San Francisco Chronicle, the San Francisco Examiner, the San Francisco Bay Guardian, and the San Francisco Progress and (f) political action committees, such as Womens' Political Fund.

8. In contrast to the materials distributed by these groups, which contain endorsements for both nonpartisan and primary candidates, the County Central Committee can issue mailers containing endorsements only for Propositions or Initiatives. A true and correct copy of one of these mailers is appended to this declaration as Exhibit E.

9. The laws banning official party endorsements or support have thus created an odd dichotomy between the permissible activities of the official political party organizations on the other hand. As demonstrated in paragraph 7, large numbers of individuals and groups with

widely varying political viewpoints exercise their freedom to criticize or support San Francisco political candidates. Yet, the County Central Committee and the State Central Committee, which are the supposed leaders of the Democratic Party in San Francisco and the state, and which have among their memberships (as do their Republican counterparts) some of the best informed and most politically aware citizens, cannot say anything.

10. So long as the official political party organizations are prevented from expressing their views on political candidates, ad hoc groups "borrowing" the word "Democratic" and creating official-sounding titles will continue to have the ability to mislead voters into thinking that their slate mailer originated with, or was approved by, the official party organizations. If the County Central Committee and State Central Committee were allowed to distribute their own endorsement literature, such confusion could be minimized.

11. In many school, county, and city elections, the race is between a candidate whom people know is a Democrat and a candidate whom people know is a Republican. In the endorsements issued by Democratic Clubs, the Clubs clearly identify themselves as being affiliated with the Democratic Party. Further, major office holders, such as Mayor Feinstein, are widely known to be Democrats.

12. I became a member of the County Central Committee because I shared the political beliefs of the other members of that organization. I thought that the County Central Committee could advance these shared political beliefs far more effectively than I could as a single individual. One of the few ways for our Committee to do this is to issue an endorsement on behalf of the entire group. My individual endorsement is worth far less than such a collective endorsement. Since the Committee cannot endorse in direct party primary elections or in elections for school, county, or city posts, however, our whole purpose in associating together has been frustrated.

13. If our County Central Committee were to issue endorsements in the June 1984 primary races, we would have to begin the endorsement process in early April. The period of time between early April and June would be spent in distributing notices to the candidates of our intent to endorse, evaluating the candidates, raising money to fund a slate card or mailer, and printing and distributing these endorsement materials.

14. Our County Central Committee would adopt rules regulating the time and place of our meetings that are more flexible than those contained in sections 8920 and 8921 of the Elections Code. As a former member of the Democratic State Central Committee, I would also like to abolish sections 8660, 8661, 8663, 8664, 8665, 8667, and 8669 of the Elections Code, to allow that Committee to control the method of selecting its own members. In addition, I would favor the adoption of rules regulating the time and place of State Central Committee meetings that are more flexible than those contained in section 8710 of the Elections Code. Neither I nor the County Central Committee has sought to disobey or change these rules because of their existence and the threat of their enforcement by the defendants.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at San Francisco, California, this 29th day of February, 1984.

/s/ Linda Post
LINDA POST

[Exhibits A through E Omitted]

ADDENDUM J

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 2, 1984]

Date: April 9, 1984
Time: 10:30 a.m.

SUPPLEMENTAL DECLARATION OF LINDA POST IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, LINDA POST, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chair of the San Francisco County Democratic Central Committee (the "County Central Committee"). I was duly elected to the position of chair by a unanimous vote of the full County Central Committee in January 1983. I have been a member of the County Central Committee since 1980 and have served as Chair since January, 1983.

2. I have read the memorandum filed by the defendants in opposition to Plaintiffs' Motion for Summary Judgment. The defendants' attempt to characterize the plaintiffs as entities and individuals who "have lost power struggles" has no basis in fact. The Democratic County Central Committees for San Francisco, Los Angeles, Alameda, Santa Clara, Solano and Placer Counties are very much in the mainstream of the California Democratic party and are well respected within the State Democratic party. Similarly, I consider myself to be very much in the mainstream of the State and local Democratic party. I have worked with all elements of the party, elected officials, and groups that comprise the constituencies within the party. For example, I have good working relations with Mayor Diane Feinstein; Congresswomen Sala Burton and Barbara Boxer; Peter Kelley, State Chair of the California Democratic party; Peter Kelley's predecessors; and the great majority of the elected officials in San Francisco.

3. The defendants' characterization of the function of county central committees is absolutely wrong. The county central committees do much more than just campaign in the November general elections for their party nominees. In fact, county central committees can and do perform the following functions: (a) voter registration drives; (b) getting the vote out on election day; (c) analyzing local and state ballot propositions, taking positions on such propositions, and publicizing our stands through slate cards, press releases, and other communications; and (d) taking action on a continuing basis on numerous issues brought to the county central committee by community groups.

4. Prior to the *Unger* decision, we were also able to and did endorse candidates running in school, county, and city elections.

5. Although the San Francisco County Democratic Central Committee is part of the Democratic party, we

are an independent working entity, elected locally. The Elections Code provides for the separate election of County Central Committee members. We have our own by-laws separate from those of the State Central Committee. We hire our own staff people, and are empowered and do raise funds independent of the State Central Committee. We can sue and be sued as a separate entity.

6. Differences of opinion regarding issues and candidates is part of democracy, and part of the political process. The full airing of different views is necessary. That's politics. On any issue put before our County Central Committee, there could be a difference of opinion. For example, in the November 1983 elections, we took a stand on each of the sixteen City propositions on the ballot. (*See* Exhibit A to my first declaration, filed March 5, 1984.) The defendants' logic would lead to the result that we should not have had the right to endorse on any of those propositions, because there was a "faction" created every time we had a difference of opinion. That is not what I understand democracy is all about.

7. We have had internal debates within our Committee many times in the past on various issues, but such debate has never "factionalized" the Committee before so as to disable it or to render it ineffective in the general election.

8. If we were afraid that endorsing on a given issue or candidate would be too divisive within our Committee, we could decide to not take a position, which would be our right, and which we have done in the past. The defendants would have the State of California dictate that we refrain from taking positions in all cases. This is paternalism. We are a responsible body that is capable of making the decision "endorse/not endorse" by ourselves.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1st day of April, 1984, at San Francisco, California.

/s/ Linda Post
LINDA POST

ADDENDUM K

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed March 5, 1984]

Date: April 2, 1984
Time: 10:30 a.m.

DECLARATION OF THOMAS ROMERO IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, THOMAS ROMERO, declare as follows:

1. I make this declaration in support of plaintiffs' motion for summary judgment. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the Placer County Democratic Central Committee (the "County Central Committee"). I have been a member of

the County Central Committee since 1973 and have served as Chair from 1977 to June 1978 and from June 1980 to the present. I have been an active participant in the activities of the Democratic Party of California since 1973.

2. The County Central Committee would endorse, support, or oppose candidates for nomination in direct primary elections, including candidates running for State Senate, State Assembly, and United States House of Representatives in June 1984 and in 1986, but for the existence of section 11702 of the California Elections Code (the "Elections Code") and the threat of enforcement of these provisions by the defendants. Our Committee would have endorsed a candidate for United States House of Representatives in 1980 if it had been legal to do so.

3. One of the main functions of the County Central Committee is to inform Placer County voters of the Democratic Party platform, the party's proposals for change, and the party's positions on other significant issues. Our County Central Committee has even formulated its own platform, a true and correct copy of which is appended hereto as Exhibit A. Another of the County Central Committe's main functions is to ensure that the party leadership, including elected officials, endorses the beliefs and positions of the California Democratic Party.

4. Because the County Central Committee is not allowed to endorse, support, or oppose candidates in primary elections, it cannot educate the public about a candidate's position on issues, including issues contained in our Committee's platform, nor can it work to ensure that Party leaders are committed to the goals and ideals of the California Democratic Party. We cannot, for example, oppose the state legislators representing our county who voted to impose a fee on community college students, a position opposed to our Committee's platform. Nor can we even educate the public about the legislators' voting records.

5. On numerous occasions, voters have called me up, as Chair of the County Central Committee, to ask what our position is in regard to candidates in primary elections. I have had to respond that the County Central Committee is forbidden by law from commenting on these or other candidates for partisan office.

6. Numerous unofficial groups regularly endorse candidates in primary elections in Placer County. These groups include the County Taxpayers' Association, the Placer County Sheriffs' Association, labor organizations such as C.O.P.E. and the American Federation of Teachers, individual campaign organizations, and newspapers, such as the Auburn Journal, the Roseville Press Tribune, the Colfax Record, and the Lincoln News Messenger.

7. In contrast to these groups, which can endorse primary candidates, the County Central Committee must remain silent. It is unfair that the group most interested in the party platform and the party's position on issues cannot express its opinion while dozens of other individuals and groups freely publicize their views.

8. I became a member of the County Central Committee because I shared the political beliefs of the other members of that organization. I thought that the County Central Committee could advance these shared political beliefs far more effectively than I could as a single individual. Even as chairperson of that Committee, my individual endorsement is worth far less than the collective endorsement of the County Central Committee as a whole. Since the Committee cannot endorse in primary campaigns, our whole purpose in associating together has been frustrated.

9. Our County Central Committee would adopt more flexible rules regulating the time and place of our meetings than those contained in sections 8920 and 8921 of the Elections Code. We would also like to abolish sections 8660, 8661, 8663, 8664, 8665, of the Elections Code, giv-

ing the Democratic Party control over the method of selecting the members of its central policy-making organization. In addition, we would favor the adoption of more flexible rules regulating the time and place of State Central Committee meetings contained in section 8710 of the Elections Code. Neither I nor the County Central Committee has sought to disobey these rules because of the threat of enforcement of these provisions by the defendants.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed at Auburn, California, this 28 day of February, 1984.

/s/ Thomas Romero
THOMAS ROMERO

[Exhibit A Omitted]

ADDENDUM L

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

San Francisco, CA
Monday, April 9, 1984

MOTION FOR SUMMARY JUDGMENT AND MOTION TO DISMISS BEFORE THE HONORABLE MARILYN H. PATEL, JUDGE

REPORTED BY: PAUL SCHILLER, C.S.R.

[Filed in the Ninth Circuit Court of Appeals
April 18, 1984]

Appearances:

For the Plaintiffs:

JAMES J. BROSNAHAN, ESQUIRE
CEDRIC CHAO, ESQUIRE
MORRISON & FOERSTER
One Market Plaza
Spear Street Tower
San Francisco, CA 94105

For Defendants Other Than Defendant Filibozian [sic]:

JOHN K. VAN DE KAMP
Attorney General
State of California
1515 K Street
Sacramento, CA 95814

By: GEOFFREY L. GRAYBILL
Assistant Attorney General

For Defendant Philobosian:

DE WITT W. CLINTON
County Counsel
County of Los Angeles
500 West Temple Street
Los Angeles, CA 90012

By: PHILIP W. HICKOK
Deputy County Counsel

Monday, April 9, 1984

THE CLERK: Civil Case 83-5599, San Francisco County Democratic Central Committee, et al., versus March Fong Eu, et al., motion for summary judgment and motion to dismiss.

Counsel, your appearances, please.

MR. BROSNAHAN: Good morning, Your Honor, James A. Brosnahan for the plaintiffs.

MR. GRAYBILL: Geoffrey Graybill, Deputy Attorney General, for the defendant March Fong Eu.

MR. HICKOK: Phil Hickok, Deputy County Counsel, for defendant Philobosian.

MR. CHAO: Cedric Chao for plaintiff.

THE COURT: Who is going to be arguing on behalf of plaintiffs and defendants?

MR. BROSNAHAN: I will be arguing on behalf of plaintiffs, Your Honor.

MR. GRAYBILL: And I will be arguing on behalf of the defendants, except for defendant Philobosian who is separately represented, but I think I am going to be taking the bulk of the argument.

* * * *

THE COURT: Just a moment. If there is a central committee, who is the plaintiff in this action, who wishes to endorse a particular candidate, and they vote to do so in a direct primary, you are suggesting that they may do so and not be in violation of the law?

MR. GRAYBILL: Well, they are obviously in violation of Elections Code Section 11702.

THE COURT: Yes.

MR. GRAYBILL: In our view, they are not in violation of the Elections Code Section 29430 or 29102. Those are the statutes that plaintiffs ironically enough insist they must be prosecuted under.

THE COURT: Let me ask you about violation of 11702. The Central Committee of the City and County of San Francisco decides that there is a particular candidate they want to endorse in the direct primary, and despite the law to the contrary, based upon your assurances, of course, that they are not going to be prosecuted, they go ahead and endorse this candidate and let it be known through various kinds of brochures, communiques, whatever, that this particular candidate is being endorsed.

And you are approached by a very vociferous opposing candidate, who is very unhappy about this, because they violated the law. You are not going to enforce that provision against the Central Committee? I guess what you are saying is that you are not going to bring an action to enjoin them or seek any permanent penalties against them?

MR. GRAYBILL: Your Honor, pursuant to the Eleventh Amendment, the only thing that we are answerable for—

THE COURT: I want an answer to my question.

MR. GRAYBILL: The answer that I can give you is that we have not done so in the past. We do not view there being any criminal provisions involved here. Our attitude has been that it is primarily a statute protecting the rights of the individual party members that is available there. Without those provisions the party members themselves would not have a hook.

THE COURT: That does not answer my question. Are you prepared to tell those members of San Francisco County Democratic Committee that if they endorse candidate X in the primary, and candidate Y comes and complains to you, that you are not going to seek to enjoin them from violation of the law?

MR. GRAYBILL: You are asking a hypothetical question that I can't really answer. All I can do is point out to you what the history of our involvement is, what our attitude has been.

We have never been involved in the enforcement of those statutes, never. None of the defendants, either from a civil enforcement action with respect to nonpartisan endorsement or criminal enforcement, we are not here in a situation, and I don't think that we can bootstrap jurisdiction by asking me to answer a hypothetical question.

THE COURT: But the law says it is a violation of the law. They are entitled to know, because their first amendment rights are seriously implicated and presumably because they are involved actively in the political process, they want to obey the law, they want to know if they violate the law, what is going to happen to them.

MR. GRAYBILL: Your Honor, you might as well ask that question of their fellow party members who unfortunately are not represented before this court, because they can enforce those statutes.

[Remainder of Transcript and Certificate of Court Reporter Omitted]

ADDENDUM M

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 6, 1984]

DECLARATION OF DOLPH ANDREWS REGARDING AUTHORIZATION OF LAWSUIT

I, DOLPH ANDREWS, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chair of the San Francisco County Republican Central Committee (the "County Central Committee"). The position of Chair of the County Central Committee is selected by a vote of the full County Central Committee. I have been a member of the County Central

Committee since 1976 and have served as Chair since January 1983.

2. Both I and the County Central Committee are plaintiffs in the second and third causes of action of the above-captioned lawsuit.

3. After consultation with other members of the County Central Committee, as well as with the Executive Director of the County Central Committee, I determined that it was appropriate and desirable for the County Central Committee and for me, as Chair, to join this suit as co-plaintiffs, and accordingly, I properly authorized that action.

4. This process was in accord and compliance with the procedures of the County Central Committee.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, California, this 7th day of April, 1984.

/s/ Dolph Andrews
DOLPH ANDREWS

ADDENDUM N

[Filed October 15, 1984]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851
[N.D. Cal. No. C-83-5599-MHP]

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs/Appellees,
v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants/Appellants.

[Designation of Counsel Omitted]

SUPPLEMENTAL DECLARATION OF DOLPH ANDEWS REGARDING AUTHORIZATION OF LAWSUIT BY SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE

I, DOLPH ANDREWS, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto, I am the Chair of the San Francisco County Republican Central Committee (the "County Central Committee"). I have been a member of the County Central Committee since 1976 and have served as Chair since January 1983.

2. Both I and the County Central Committee are plaintiffs in the Second and Third Causes of Action of the above-captioned lawsuit.

3. On April 6, 1984, I submitted a declaration to the District Court describing the background to the County Central Committee's participation as a co-plaintiff in this lawsuit.

4. On approximately May 8, 1984, after the entry of final judgment by the District Court, one of the members of the County Central Committee, Terence Faulkner, raised the issue whether the County Central Committee's participation in this lawsuit had been correctly authorized. We thereupon commenced the process of having the full County Central Committee examine the issue of its participation.

5. On June 29, 1984, the Steering Committee, whose existence is provided for by the County Central Committee's bylaws, met and discussed the County Central Committee's continued participation as a co-plaintiff in this lawsuit. I was present at this meeting. The Steering Committee voted after full discussion to recommend to the full County Central Committee that it continue as a co-plaintiff.

6. On July 31, 1984, the Issues Committee, which is one of the standing committees of the County Central Committee, also met and discussed the question of our continued participation as a co-plaintiff in this lawsuit. I was present at this meeting. The Issues Committee also voted to recommend that the County Central Committee continue as a co-plaintiff in this lawsuit. A true and correct copy of the Resolution adopted by the Issues Committee on July 31 is attached hereto as a portion of Exhibit 1.

7. At the September 6, 1984 meeting of the full County Central Committee, the question of the County Central Committee's participation as a co-plaintiff in this

lawsuit was discussed. After this discussion, a roll call was taken on the issue of continued participation. The County Central Committee voted 18 to 6 in favor of continued participation as a co-plaintiff in the Second and Third Causes of Action, which are the causes of action to which our committee was originally designated as a co-plaintiff. The full County Central Committee voted to adopt the Resolution which previously had been adopted by our Issues Committee on July 31. I was present at the September 6 meeting.

8. The members voting in favor of continued participation were: Dolph Andrews, Robert Bacci, Paul Vuksich (for Doug Binderup), Don Bowden, Al Martino (for Frank Crosetti), Lee Dolson, Ann Guth (for Leanne Guth), Leland Guth, Rich Hazlewood, Judy Feldman (for Mike Henderson), Larry Hughes (for Senator Milton Marks), Wally Myers (for Lester O'Shea), Harriet Ross, John Stark, Kevin Sullivan, Bill Terheyden, Dorothy Vuksich, and Max Woods.

9. The members voting against continued participation were: Stanley Bramwell, Larry Becker (for John Carney), Donald Donaldson, Terence Faulkner, Dennis Mark (for Bill O'Keeffe), and Thomas Spinosa.

10. Attached hereto as Exhibit 1 is a true and correct copy of the minutes of the September 6 Committee meeting, and two other items that are incorporated as part of the minutes. Attached to the September 6 minutes is a tally sheet, recording the votes for and against our committee's continued participation as a co-plaintiff in this lawsuit. The column with the heading "7-31-84 Suit Resolution" records the yes and no votes, as described in paragraphs 8 and 9 above. Also attached to the September 6 minutes is a copy of the Resolution that was adopted by our Issues Committee on July 31 (see paragraph 6 above) and by the full County Central Committee on September 6.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 9th day of October, 1984, at San Francisco, California.

/s/ Dolph Andrews
DOLPH ANDREWS

[Exhibit 1 Omitted]

ADDENDUM O

[Filed October 15, 1984]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851
[N.D. Cal. No. C-83-5599-MHP]

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs/Appellees,
v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants/Appellants.

[Designation of Counsel Omitted]

DECLARATION OF ROBERT R. BACCI REGARDING AUTHORIZATION OF LAWSUIT BY SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE

I, ROBERT R. BACCI, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Secretary of the San Francisco County Republican Central Committee (the "County Central Committee"). I am and have been since January 1983 an elected member of the County Central Committee.

2. One of my duties as Secretary is to record the minutes for our County Central Committee meetings.

3. I was present during the September 6, 1984 meeting of the County Central Committee, and served in my capacity as recording Secretary during said meeting.

4. Attached hereto as Exhibit 1 is a true and correct copy of the minutes of the September 6, 1984 meeting, and two other items that are incorporated as part of the minutes. Attached to the September 6 minutes is a true and correct copy of the official roll sheet, recording the votes of each Committee member on the resolution concerning the County Central Committee's continued participation as a co-plaintiff in the above-captioned litigation. The column with the heading "7-31-84 Suit Resolution" records the yes and no votes on this issue. Also attached to the September 6 minutes is a true and correct copy of the Resolution that was adopted by our Issues Committee on July 31 and by the full County Central Committee on September 6.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 9th day of October, 1984, at San Francisco, California.

/s/ Robert R. Bacci
ROBERT R. BACCI

[Exhibit 1 Omitted]

ADDENDUM P

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 6, 1984]

DECLARATION OF MARY GINGELL REGARDING AUTHORIZATION OF LAWSUIT

I, MARY GINGELL, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a member of the State Central Committee of the Libertarian Party of California and serve on the Executive Committee of that body. I have been a member of the State Central Committee since November 1981 and served as Chair from August 1982 to February 1984.

2. Both I and the State Central Committee are plaintiffs in all of the causes of action of the above-captioned lawsuit.

3. On November 21, 1982, the State Central Committee, with a quorum present, voted to join the present lawsuit as a co-plaintiff in all three causes of action. I was personally present during the vote and during the discussions that preceded the vote. The discussions and the vote reflected the State Central Committee's approval of each of the allegations of the Complaint pertaining to the Committee.

4. This vote was taken in accordance and in compliance with the by-laws of the State Central Committee.

5. The participation of the State Central Committee in this lawsuit has been properly authorized.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Costa Mesa, California, this 3 day of April, 1984.

/s/ Mary T. Gingell
MARY GINGELL

ADDENDUM Q

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed August 13, 1984]

FURTHER DECLARATION OF MARY GINGELL REGARDING AUTHORIZATION OF LAWSUIT

I, MARY GINGELL, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am a member of the State Central Committee of the Libertarian Party of California and serve on the Executive Committee of that body (the "Executive Committee"). I have been a member of the State Central Committee since November 1981 and served as chair from August 1982 to February 1984.

2. Both I and the State Central Committee are plaintiffs in all of the causes of action of the above-captioned lawsuit.

3. I am aware of and have read the allegations of Mr. Thomas Spinosa and Mr. W. Stanley Adamson, which are based upon their reading of the November 21, 1982 minutes of the Executive Committee meeting, that the State Central Committee is not authorized to join the first and third causes of action.

4. At its November 21, 1982 meeting, which I attended and chaired, the Executive Committee discussed this lawsuit, including its challenges to (1) the prohibitions against preprimary endorsements, (2) the state's excessive restrictions on and regulations of political parties, as well as (3) the prohibitions against endorsements in nonpartisan elections.

5. The resolution that was passed at the November 21, 1982 meeting reflected that discussion and authorized without reservation the State Central Committee's participation as a plaintiff in this lawsuit. The resolution did not limit, and was not intended to limit, that authorization to only the challenge against the statutes prohibiting endorsements in nonpartisan elections.

6. I have conferred with Carolyn Treynor, a member of the Executive Committee and the individual who kept and transcribed the minutes of the November 21, 1982 meeting, about the allegations of Mr. Thomas Spinosa and Mr. W. Stanley Adamson. She agreed that at that meeting a discussion was had and a vote was taken to join this lawsuit without reservation or limitation to any of its parts. She told me that as an easy means to identify the lawsuit in the minutes, she referred to it as "the lawsuit to allow parties to endorse in non-partisan elections . . . ." She also told me that this phrase was her abbreviated method of referring to the lawsuit, and was not meant to describe the discussion or vote that took place at the meeting. She said specifically that this phrase was not meant to suggest that the State Central Committee was authorized to join only that portion of the lawsuit challenging the prohibition against endorsing nonpartisan elections.

7. Thus, the State Central Committee intended to be a plaintiff in all three causes of action of this lawsuit. We agree fully with the goals of this lawsuit, and the suggestions that we do not are absurd.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Costa Mesa, California this 7 day of August 1984.

/s/ Mary T. Gingell
MARY GINGELL

ADDENDUM R

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 19, 1984]

DECLARATION OF MARY KING REGARDING AUTHORIZATION OF LAWSUIT

I, MARY KING, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the Alameda County Democratic Central Committee (the "County Central Committee"). I have been a member of the County Central Committee since 1979 and have served as Chair since January, 1983.

2. The County Central Committee is a plaintiff in all of the causes of action of the above-captioned lawsuit.

3. On or about October 5, 1983, the County Central Committee, with a quorum present, voted to join this

lawsuit as a co-plaintiff in all three causes of action. I was personally present during the vote and during the discussions that preceded the vote. The discussions and the vote reflected the County Central Committee's approval of each of the allegations of the Complaint pertaining to the Committee, including those allegations relating to the Committee's intent to endorse candidates if it were allowed to do so, and to the Committee's desire to alter the rules complained of in the third cause of action.

4. This vote was taken in accordance and in compliance with the by-laws of the County Central Committee.

5. The participation of the County Central Committee in this lawsuit has been properly authorized.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Oakland, California, this 7 day of April, 1984.

/s/ Mary V. King
MARY KING

ADDENDUM S

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed August 13, 1984]

FURTHER DECLARATION OF MARY KING REGARDING AUTHORIZATION OF LAWSUIT

I, MARY KING, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the Alameda County Democratic Central Committee (the "County Central Committee"). I have been a member of the County Central Committee since 1979 and have served as Chair since January 1983.

2. The County Central Committee is a plaintiff in all three causes of action of the above-captioned lawsuit.

3. I am aware of and have read the allegations of Mr. Thomas Spinosa and Mr. W. Stanley Adamson, which are based on their reading of the October 5, 1983 minutes of our County Central Committee meeting, that the County Central Committee is not authorized to join the third cause of action.

4. At its October 5, 1983 meeting, which I attended and chaired, the County Central Committee discussed this lawsuit, including its challenges to the state's excessive restrictions on and regulation of political parties as well as its challenges to prohibitions against preprimary endorsements and endorsements in nonpartisan elections.

5. The motion that was passed by the County Central Committee during its October 5, 1983 meeting reflected that discussion and stated without limitation that the County Central Committee should be a plaintiff in this lawsuit. The motion did not limit, and was not intended to limit, our Committee's participation in the first and second causes of action.

6. Thus, the County Central Committee properly authorized its participation in all three causes of action of this lawsuit.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Oakland, California, this 6 day of August 1984.

/s/ Mary V. King
MARY KING

ADDENDUM T

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 6, 1984]

DECLARATION OF ROBERT MACK REGARDING AUTHORIZATION OF LAWSUIT

I, ROBERT MACK, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the Santa Clara County Democratic Central Committee (the "County Central Committee"). I have been a member of the County Central Committee since 1966 and have served as Chair since January 1983.

2. The County Central Committee is a plaintiff in all of the causes of action of the above-captioned lawsuit.

3. The County Central Committee, as well as the Executive Board of the County Central Committee, have discussed and reviewed the Committee's participation as a co-plaintiff in this lawsuit. The County Central Committee, with a quorum present, properly authorized its participation in this lawsuit. I was personally present during each of the above-described meetings.

4. The allegations of the Complaint in this lawsuit that pertain to our Committee accurately reflect the intent of the County Central Committee.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Sunnyvale, California, this 5th day of April, 1984.

/s/ Robert Mack
ROBERT MACK

[Proof of Service Omitted]

ADDENDUM U

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 6, 1984]

DECLARATION OF LINDA POST
REGARDING AUTHORIZATION OF LAWSUIT

I, LINDA POST, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chair of the San Francisco County Democratic Central Committee (the "County Central Committee"). I was duly elected to the position of chair by a unanimous vote of the full County Central Committee in January 1983. I have been a member of the County Central Committee since 1980 and have served as Chair since January, 1983.

2. Both I and the County Central Committee are plaintiffs in all three of the causes of action of the above-captioned lawsuit.

3. On or about September 29, 1983, the County Central Committee, with a quorum present, voted to join this lawsuit as a co-plaintiff in all three causes of action. I was personally present during the vote and during the discussions that preceded the vote. The discussions and the vote reflected the County Central Committee's approval of each of the allegations of the Complaint pertaining to the Committee, including those allegations relating to the Committee's intent to endorse candidates if it were allowed to do so, and to the Committee's desire to alter the rules complained of in the third cause of action.

4. This vote was taken in accordance and in compliance with the by-laws of the County Central Committee.

5. The participation of the County Central Committee in this lawsuit has been properly authorized.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at San Francisco, this 1st day of April, 1984.

/s/ Linda Post
LINDA POST

ADDENDUM V

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 6, 1984]

DECLARATION OF CATHERINE C. ROCKWOOD REGARDING AUTHORIZATION OF LAWSUIT

I, CATHERINE C. ROCKWOOD, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I have been the Southern Vice Chairperson of the Solano County Democratic Central Committee (the "County Central Committee") since January 1982, and have been a member of the County Central Committee since 1978. I have been a member of the Democratic State Central Committee since January 1983.

2. The County Central Committee is a plaintiff in the second and third causes of action of the above-captioned lawsuit.

3. The County Central Committee, with a quorum present, at its August, September, and October 1983 monthly meetings, fully discussed the present lawsuit and the Committee's participation in the lawsuit. I was personally present during the September and October meetings. The County Central Committee voted to join this lawsuit as a co-plaintiff in the second and third causes of action. The discussions and the vote reflected the County Central Committee's approval of each of the allegations of the Complaint pertaining to the Committee, including those allegations relating to the Committee's intent to endorse candidates in school, county, and city elections if it were allowed to do so, and to the Committee's desire to alter the rules complained-of in the third cause of action.

4. This vote was taken in accordance and in compliance with the by-laws of the County Central Committee.

5. The participation of the County Central Committee in this lawsuit has been properly authorized.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Vallejo, California, this 4th day of April, 1984.

/s/ Catherine C. Rockwood
CATHERINE C. ROCKWOOD

ADDENDUM W

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 19, 1984]

DECLARATION OF THOMAS ROMERO REGARDING AUTHORIZATION OF LAWSUIT

I, THOMAS ROMERO, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the Placer County Democratic Central Committee (the "County Central Committee"). I have been a member of the County Central Committee since 1973 and have served as Chair from 1977 to June 1978 and from June 1980 to the present.

2. Both I and the County Central Committee are plaintiffs in the first and third causes of action of the above-captioned lawsuit.

3. The County Central Committee, with a quorum present, at its January, September, and November monthly meetings, fully discussed the present lawsuit and the Committee's participation in the lawsuit. I was personally present during these meetings. The County Central Committee voted to join the present lawsuit as a co-plaintiff in the first and third causes of action. The discussions and the vote reflected the County Central Committee's approval of each of the allegations of the Complaint pertaining to the Committee, including those allegations relating to the Committee's intent to endorse candidates if it were allowed to do so, and to the Committee's desire to alter the rules complained-of in the third cause of action.

4. This vote was taken in accordance and in compliance with the by-laws of the County Central Committee.

5. The participation of the County Central Committee in this lawsuit has been properly authorized.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Auburn, California, this 11 day of April, 1984.

/s/ Thomas Romero
THOMAS ROMERO

ADDENDUM X

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed August 13, 1984]

FURTHER DECLARATION OF THOMAS ROMERO REGARDING AUTHORIZATION OF LAWSUIT

I, THOMAS ROMERO, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the Placer County Democratic Central Committee (the "County Central Committee"). I have been a member of the County Central Committee since 1973 and have served as Chair from 1977 to June 1978 and from June 1980 to the present.

2. Both I and the County Central Committee are plaintiffs in the first and third causes of action of the above-captioned lawsuit.

3. I am aware of and have read the allegations of Mr. Thomas Spinosa and Mr. W. Stanley Adamson, which are based on their reading of the January 20, 1983 minutes of our County Central Committee meeting, that the County Central Committee is not authorized to join the third cause of action.

4. At its January 20, 1983 meeting, which I attended and chaired, the County Central Committee discussed this lawsuit, including its challenge to the state's excessive restrictions on and regulation of political parties, as well as its challenge to the statutory prohibition against preprimary endorsements.

5. The resolution that was passed by the County Central Committee during its January 20, 1983 meeting reflected that discussion and broadly authorized the County Central Committee to join as a co-litigant in the proposed lawsuit. The resolution did not limit and was not intended to limit that authorization to the cause of action challenging the prohibition against preprimary endorsements.

6. My wife, who is also a member of the County Central Committee, and I kept and transcribed the minutes of the January 20, 1983 meeting of the County Central Committee. As a shorthand means of identifying the proposed lawsuit in the minutes of the January 20, 1983 meeting, we referred to it as "a suit which would end the restriction on preprimary endorsements." This phrase was used only as an abbreviated method of identifying this lawsuit, and was not meant to describe the discussions preceding the County Central Committee's vote or the intent or content of the motion that was carried authorizing the County Central Committee to be a co-litigant in this action. Specifically, this phrase was not meant to suggest that the County Central Committee was authorized to join only that portion of the lawsuit challenging the prohibition against preprimary endorsements.

7. Thus, the County Central Committee intended to be a plaintiff in the first and third causes of action of this lawsuit.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Auburn, California, this 3rd day of August 1984.

/s/ Thomas Romero
THOMAS ROMERO

ADDENDUM Y

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed April 6, 1984]

DECLARATION OF CAROLYN WALLACE REGARDING AUTHORIZATION OF LAWSUIT

I, CAROLYN WALLACE, declare as follows:

1. I state these facts of my own personal knowledge, and if called as a witness could testify competently thereto. I am the Chairperson of the Los Angeles County Democratic Central Committee (the "County Central Committee"). I have been a member of the County Central Committee since 1978 and have served as Chair since January 1983.

2. Both I and the County Central Committee are plaintiffs in the second cause of action of the above-captioned lawsuit.

3. On or about Oct. 18, 1983, the County Central Committee, with a quorum present, voted to join the present lawsuit as a co-plaintiff in the second cause of action. I was personally present during the vote and during the discussions that preceded the vote. The discussions and the vote reflected the County Central Committee's approval of each of the allegations of the Complaint pertaining to the Committee, including those allegations relating to the Committee's intent to endorse candidates in school, county, and city elections if it were allowed to do so.

4. This vote was taken in accordance and in compliance with the by-laws of the County Central Committee.

5. The participation of the County Central Committee in this lawsuit has been properly authorized.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Malibu, California, this 2 day of April, 1984.

/s/ Carolyn Wallace
CAROLYN WALLACE

ADDENDUM Z

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed June 1, 1984]

PLAINTIFFS' FURTHER SUBMISSION RE AUTHORIZATION OF LAWSUIT

Plaintiffs previously filed with this Court a declaration from the chair or vice-chair of each of the plaintiff Central Committees establishing that the Committees' participation in this lawsuit has been properly authorized. Plaintiffs hereby submit further documentation, namely, Central Committee bylaws and those portions of Committee minutes bearing on the authorization issue.

The documents submitted herewith are as follows:

Exhibit 1: Bylaws, San Francisco County Democratic Central Committee.

Exhibit 2: Minutes, dated August 24, 1983, San Francisco County Democratic Central Committee.

Exhibit 3: Minutes, dated September 29, 1983, San Francisco County Democratic Central Committee.

Exhibit 4: Minutes, undated, San Francisco County Democratic Central Committee.

Exhibit 5: Bylaws, San Francisco County Republican Central Committee.

Exhibit 6: Bylaws, Alameda County Democratic Central Committee.

Exhibit 7: Minutes, dated October 5, 1983, Alameda County Democratic Central Committee.

Exhibit 8: Bylaws, Santa Clara County Democratic Central Committee.

Exhibit 9: Minutes, dated September 2, 1982, Santa Clara County Democratic Central Committee.

Exhibit 10: Minutes, dated September 1, 1983, Santa Clara County Democratic Central Committee; and Minutes dated September 15, 1983, Executive Board of Santa Clara County Democratic Central Committee.

Exhibit 11: Bylaws, Solano County Democratic Central Committee.

Exhibit 12: Bylaws, Placer County Democratic Central Committee.

Exhibit 13: Minutes, dated January 20, 1983, Placer County Democratic Central Committee.

Exhibit 14: Minutes, dated September 15, 1983, Placer County Democratic Central Committee.

Exhibit 15: Minutes, dated November 17, 1983, Placer County Democratic Central Committee.

Exhibit 16: Bylaws, Libertarian Party of California.

Exhibit 17: Minutes, dated November 21, 1983, Libertarian Party of California.

Exhibit 18: Declaration of Terence Faulkner, member of San Francisco County Republican Committee, filed with the Ninth Circuit Court of Appeals, May 8, 1984.

The bylaws of the Los Angeles County Democratic Central Committee will be produced as soon as they are received by plaintiffs' counsel. To the extent that additional minutes bearing on the authorization issue can be located, such minutes will also be produced as soon as they become available. Finally, the San Francisco County Republican Central Committee will discuss its participation in this lawsuit on June 7, 1984, its next regularly scheduled meeting.

Dated: June 1, 1984

Respectfully submitted,

JAMES J. BROSNAHAN
CEDRIC C. CHAO
PAUL R. DIESETH
DEBORAH LEON
MORRISON & FOERSTER

/s/ By: Cedric Chao
CEDRIC C. CHAO

[Exhibits 1 through 18 and Proof of Service Omitted]

ADDENDUM AA

[Designation of Counsel Omitted]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-83-5599-MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants.

[Filed July 11, 1984]

PLAINTIFFS' THIRD SUBMISSION RE AUTHORIZATION OF LAWSUIT

Plaintiffs previously filed with this Court a declaration from the chair or vice-chair of each of the Central Committee plaintiffs establishing that the Committees' participation in this lawsuit has been properly authorized. On June 1, 1984, plaintiffs filed with this Court a "Further Submission re Authorization of Lawsuit," which included eighteen (18) exhibits. Said Further Submission consisted of Central Committee bylaws and those portions of Committee minutes bearing on the authorization issue.

Plaintiffs hereby make a third submission of bylaws and portions of Committee minutes which were received

by plaintiffs' counsel subsequent to the June 1, 1984 filing. For ease of reference, these exhibits are numbered so as to continue the sequence of the exhibits contained in the June 1, 1984 submission. The documents submitted herewith are as follows:

Exhibit 19: Minutes, dated May 22, Executive Commitee of the Libertarian Party of California.

Exhibit 20: Minutes, dated August 7, 1983, Executive Committee of the Libertarian Party of California.

Exhibit 21: Minutes, dated November 12, 1983, Executive Committee of the Libertarian Party of California.

Exhibit 22: Minutes, dated August 25, 1983, Solano County Democratic Central Committee.

Exhibit 23: Minutes, dated September 28, 1983, Solano County Democratic Central Committee.

Exhibit 24: Bylaws, Los Angeles County Democratic Central Committee.

Exhibit 25: Minutes, dated October 11, 1983, Los Angeles County Democratic Central Committee.

Exhibit 26: Minutes, dated November 8, 1983, Los Angeles County Democratic Central Commitee.

Exhibit 27: Order, dated June 18, 1984, Ninth Circuit Court of Appeals.

This submission completes the production of bylaws and minutes bearing on the authorization issue for seven of the eight Central Committee plaintiffs. Plaintiffs' counsel has been informed that on June 7, 1984, the

eighth Central Committee plaintiff, the San Francisco County Republican Central Committee, decided to continue its discussion of its participation in this lawsuit at the Committee's next regularly scheduled meeting.

Dated: June 19, 1984

Respectfully submitted,

JAMES J. BROSNAHAN
CEDRIC C. CHAO
PAUL R. DIESETH
DEBORAH L. LEON
MORRISON & FOERSTER

By /s/ Cedric C. Chao
CEDRIC C. CHAO
Attorneys for Plaintiffs

[Exhibits 19 through 27 and Proof of Service Omitted]

ADDENDUM BB

[Filed October 15, 1984]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851

[N.D. Cal. No. C-83-5599-MHP]

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs/Appellees,

v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants/Appellants.

On Appeal from the United States District Court
for the Northern District of California

NOTICE OF ACTION BY PLAINTIFF/APPELLEE
SAN FRANCISCO COUNTY REPUBLICAN
CENTRAL COMMITTEE
REGARDING AUTHORIZATION OF LAWSUIT

[Designation of Counsel Omitted]

TO THE HONORABLE EUGENE A. WRIGHT, OTTO R. SKOPIL, AND WILLIAM A. NORRIS, CIRCUIT JUDGES:

One of the issues raised by the defendants is whether the eight central committee plaintiffs intended to be co-plaintiffs in this lawsuit. In response to this question, all eight of the central committee plaintiffs filed with the District Court copies of their bylaws, as well as declarations from their respective chairs or vice-chairs describing the process by which they decided to join as plaintiffs herein. Seven of the eight central committees discussed and voted on the question of participation as a co-plaintiff prior to the time that the complaint in this action was filed. These seven central committees filed copies of their committee minutes with the District Court.

Based on this record and on the District Court's Order Following Remand, the parties submitted briefs to this Court on the authorization issue. At that time, plaintiffs informed this Court that the eighth central committee plaintiff—San Francisco County Republican Central Committee—had taken up, but had not yet resolved, the question whether it would adopt the initial action of its Chair, Dolph Andrews, in joining the committee as a plaintiff herein. *See* Memorandum of Plaintiffs Regarding Authorization of Litigation, filed July 9, 1984.

By this pleading, plaintiffs hereby notify this Court and the defendants that the San Francisco County Republican Central Committee voted on September 6, 1984 by a margin of 18 to 6 to continue to be a co-plaintiff in this lawsuit. *See* Supplemental Declaration of Dolph Andrews Regarding Authorization of Lawsuit at ¶ 7; and Declaration of Robert R. Bacci Regarding Authorization of Lawsuit, filed herewith. Prior to the September 6 vote of the full Committee, both the Steering Committee and the Issues Committee of the San Francisco County Republican Central Committee had voted to recommend that the Central Committee continue as a plaintiff. *See* Supplemental Declaration of Dolph Andrews at ¶¶ 5-6.

Attached as Exhibit 1 to both the Supplemental Declaration of Dolph Andrews and the Declaration of Robert Bacci are copies of the following items: (1) the minutes of the September 6 County Central Committee meeting; (2) the tally sheet recording the "yes" and "no" votes of the committee members at the September 6 meeting; and (3) the Resolution that was adopted by the Issues Committee on July 31 and by the full County Central Committee on September 6.

Plaintiffs submit that the September 6 action by the San Francisco County Republican Central Committee disposes of the question raised by the defendants with regard to that committee's intent to be a plaintiff herein.

Dated: October 15, 1984

Respectfully submitted,

JAMES J. BROSNAHAN
CEDRIC C. CHAO
PAUL R. DIESETH
MORRISON & FOERSTER

By /s/ Cedric C. Chao
CEDRIC C. CHAO
Attorneys for Plaintiffs/
Appellees

[Proof of Service Omitted]

ADDENDUM CC

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851

DC #83-5599MHP

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE, LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,

Plaintiffs-Appellees,

v.

MARCH FONG EU, Secretary of State of the State of California, JOHN VAN DE KAMP, Attorney General of the State of California, ARLO SMITH, District Attorney of San Francisco County, *et al.*,

Defendants-Appellants.

APPELLANTS' SUPPLEMENTAL BRIEF
RE APPELLEES' AUTHORIZATION
OF LITIGATION

INTRODUCTION

Pursuant to this Court's order filed June 18, 1984, granting leave to file supplemental briefs, this brief is restricted to the issue "concerning the authority of appellees to bring this action and appeal" and to 10 pages.

As this Court recognized by its order filed on May 25, 1984, the record before this Court on appeal, and before

the trial court when the judgment appealed from was entered, is inadequate to determine this issue.[1] The determination of this issue is critical to the resolution jurisdictional issues of whether plaintiffs/appellees have equitable and constitutional standing to bring this action and whether prudential principles governing standing preclude a federal court from deciding the legal issues raised by the complaint in the context of this case.[2]

Despite the apparent direction of this Court to make findings of fact and conclusions of law, the District Court did not conduct a trial or create an evidentiary record. Without even considering evidence which this Court had before it, and without the participation of the parties, the District Court made findings which have absolutely no evidentiary support.

If the District Court missed the point of this Court's order of May 25, 1984, appellees did not. On or about June 1, 1984, and again after this Court's order of June 18, 1984, appellees, apparently heeding this Court's observation that appellees had not provided discovery requested by appellants, filed with the District Court what were represented by appelles' counsel to be copies of the by-laws of some of the appellee central committes and heavily censored versions of minutes of some of the central committees deemed by appellees' counsel to be material to the issue of authorization.

These documents are not admissible in evidence. There is no proper authentication or foundation and the pur-

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[1] Notwithstanding the District Court's views expressed in its order of June 1, 1984, appellants raised this issue below by every means permitted them by the District Court. (Appellants' Supplemental Brief filed May 8, 1984, pp. 5-7.)

[2] Appellants' challenges to the standing of appellees and the adequacy of the proceedings in the District Court to determine those issues included factors in addition to whether the appellee central committees had actually authorized this action to be brought in their names. (See Appellants' Supplemental Brief filed May 8, 1984 [sic], pp. 1-17, 23-37.)

ported minutes are inadmissible hearsay. Thus, no findings can be properly made from the documents.

However, as will be demonstrated by the remainder of this brief to the extent permitted by the page limitation, the documentation submitted by appellees appear to contradict the inadmissible declarations of individual plaintiffs and other persons regarding the authorization issue and indicate that in all likelihood the central committees did not authorize this action, but that members of the Committee for Party Renewal have maneuvered to appear to act for them.

If it were not beyond the scope permitted this brief, appellants would present argument that this Court should reverse the judgment and order that the entire action be dismissed without a trial on the issue of authorization due to the appellees' absence of equitable standing and the imperatives of "prudential" standards governing standing to invoke the jurisdiction of a federal court. The documents manifest the reasons that the appellees would, as they have relentlessly, resist producing them and oppose any discovery concerning their authenticity, accuracy, and foundation. Appellants have therefore filed simultaneously with this brief a motion for leave to file a reply brief.

Appellants have also filed simultaneously with this brief a motion for leave to file an appendix containing the appellees' submittals to the District Court subsequent to this Court's order of May 25, 1984, which are referred to herein.

THE LIBERTARIAN PARTY OF CALIFORNIA

The declaration of Mary Gingell asserts that the State Central Committee of the Libertarian Party of California "voted to join the present lawsuit as a co-plaintiff *in all three causes of action.*" (Appendix to appellants' Emergency Motion for Stay on Appeal, vol. VII, pp. 934-935; emphasis added.)

Exhibits 17, 19, 20 and 21 even in their drasticly censored versions demonstrate that the Libertarian Party of California did not authorize this lawsuit to be brought in its name.

Exhibit 17 purports to record that the Executive Committee conditionally authorized participation in "the lawsuit to allow parties to endorse in non-partisan election, subject to their being no fiscal expense to this body and subject to prior approval by the LPCO officers following input from volunteer attorneys."

None of the subsequent purported minute entries of the Libertarian Party demonstrate that either of the conditions were fulfilled. The minute entry purportedly set forth as Exhibit 20 states as of August 7, 1983, that no position had even been developed for review by Libertarian Party Committee attorneys as required by the purported resolution of the Executive Committee at the November 21, 1982 meeting.

Exhibit 21 purports to quote Ms. Gingell as informing the Committee that she had become a party to this lawsuit in her own right and sought consent from the Committee that her participation would not be inconsistent with her role as chairperson through February of 1984. If the Committee had authorized its becoming a party to this lawsuit, Ms. Gingell's request would have been unnecessary.

It is apparent that the Executive Committee never contemplated, let alone authorized, participation in the lawsuit challenging anything other than the prohibition against endorsements in non-partisan elections.

The Executive Committee's purported conditional approval of limited participation in this lawsuit subject to review by the Party's attorneys may very well have been inspired by the awareness that such action by the Executive Committee or the Party is not authorized by the by-

laws of the Party. (See by-laws 2 and 4(e); see also by-law 9(1) [Exh. 16].)

THE LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE

The declaration of Carolyn Wallace, dated April 2, 1984 (appellants' appendix, vol. VII, pp. 932-933), asserts that the Los Angeles County Democratic Central Committee voted to join the present lawsuit as a co-plaintiff in the second cause of action (challenge to prohibition against endorsement for non-partisan office) on or about October 18, 1983, with a quorum present.

Exhibit 26 appears to contradict Ms. Wallace's statement, both of the time of authorization and the nature of any purported authorization. Exhibit 26 purports to demonstrate that the Los Angeles County Democratic Central Committee adopted its Rules Committee's report and recommendation which stated in apparent paraphrase:

> "Rules Committee agrees with the concept of party self-governance but recommends against LACDCC becoming a plaintiff in all causes of action because it is not sure of the ultimate outcome."

At best, an inference here would be that the Committee may have authorized participation as to the third cause of action challenging statutes governing the structure and procedures of the State and County Central Committees. Moreover, it is possible to infer from this documentation that the L.A. Committee did not authorize participation in any of the causes of action. In any event, the Los Angeles County Democratic Central Committee is not named as a plaintiff as to either the first cause of action (regarding partisan endorsements) or the third cause of action (regarding organization and procedures of the State and County Committees).

Moreover, there is nothing to indicate compliance with section B of article XX of the by-laws of the Los Angeles County Democratic Central Committee (Exh. 24) requiring a 60 percent affirmative vote to pass a resolution or with the quorum requirement of subsections 2 and 3 of section D of article VIII (Exh. 24).

THE SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE

Appellees' submittals to the District Court do not contain anything with respect to the San Francisco County Republican Central Committee other than representations of appellees' counsel that the Committee may "discuss" its participation in this action in some future meeting. (Appendix, vol. X, pp. 7-104.)

Thus, the evidence submitted by appellants (Appendix to Appellants' Brief, vol. IX, pp. 58 et seq.) demonstrates conclusively that the San Francisco Republican Central Committee did not authorize participation in this lawsuit despite its plaintiff Andrews' declaration *suggesting* otherwise. (Appendix, vol. VII, pp. 936-937.)

THE SAN FRANCISCO DEMOCRATIC CENTRAL COMMITTEE

The declaration of Linda Post, dated April 1, 1984 (appellants' appendix, vol. VI, pp. 930-931), asserts that the San Francisco County Democratic Central Committee, with a quorum present, "voted to join this lawsuit as a co-plaintiff in all three causes of action; that the vote was taken in accordance and in compliance with the by-laws of the County Central Committee and that participation in the lawsuit has been properly authorized."

Appellants have obtained a copy of what is represented to them to be the complete text of the minutes for the meeting of the Committee held on September 29, 1983. A true and correct copy of the version presented to appellants is attached hereto as Exhibit A.

It should be noted that the entry on page 3 which was preserved by the appellees as Exhibit 3 comes at the end of a two-hour meeting held in the evening and is sandwiched in between routine announcements. There is reason to question whether a quorum was present at the time the activity reflected in that particular minute entry occurred (by-laws, art. II, § 4 [Exh. 1]) and there is no indication that notice was provided of that subject matter prior to the meeting. (By-laws, art. I, § 4; art. II, § 6.) It should also be noted that if the entry preserved by the appellees manifests a vote taken, the format differs dramatically from the record of votes taken on other matters at that same meeting.

Whatever Exhibits 2, 3 and 4 may turn out to be, they create a conflict amongst themselves as to what, if any, involvement the Committee has authorized in connection with this litigation and with the declaration of Ms. Post.

THE ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE

Exhibit 7 to the appellees' submittals to the District Court purports to be the minutes of the meeting of the Alameda County Democratic Central Committee on October 5, 1983. This heavily censored document purports to contain an entry indicating that this lawsuit was considered by that Committee. The entry is ambiguous on the question of whether any vote was taken on the issue.

Moreover, the purported entry in the minutes for October 5, 1983, indicates that the Committee purportedly considered only the issue of a "Committee's right to endorse." The Alameda County Democratic Central Committee is listed as a plaintiff in the third cause of action regarding the structure and procedure of party committees; however, the chairperson of the Alameda County Democratic Central Committee is not listed as a plaintiff in that cause of action.

Exhibit 7 also indicates, as did Exhibit 2, that the initiative for bringing this lawsuit did not come from wthin the Committee itself but from persons who in all likelihood are members of, or were acting on behalf of, the National Committee for Party Renewal.

THE SANTA CLARA COUNTY DEMOCRATIC CENTRAL COMMITTEE

Exhibit 10 purports to be the minutes at a meeting of the Santa Clara County Democratic Central Committee held on September 1, 1983, approximately one year after the meeting purportedly reflected in Exhibit 9. It should be noted that the Committee at this point has a new chair and that a new Committee had been elected in the June 1982 primary elections and apparently took office in January of 1983.

Thus, it is apparent that the Committee in operation at the time this lawsuit was filed had not authorized the Committee's participation in the lawsuit. As stated in subsection B1 of article VII (p. 4) of the by-laws, the Executive Committee is only authorized to act on behalf of the Central Committee "when it is impossible for the Central Committee to act." There is nothing which indicates the Central Committee could not have acted at its next meeting as proposed by the new chairman.

Moreover, there is nothing to indicate that the preemptive tactics of appellee Christman purported in Exhibit 9 complied with quorum (§ C, art. VI) and resolution consideration (subsec. B-10, art. VII) requirements of the by-laws (Exh. 8). Mr. Christman is a member of the Committee on Party Renewal (Exh. 10, p. 2).

THE SOLANO COUNTY DEMOCRATIC CENTRAL COMMITTEE

Exhibit 22 of appellees' submittals to the District Court purports to be a portion of the minutes of a meet-

ing of the Solano County Democratic Central Committee held on August 25, 1983. Exhibit 23 purports to be a heavily censored copy of the minutes of the Committee for its meeting of September 28, 1983. The format of the two sets of minutes is completely different.

The second page of Exhibit 22 purports to indicate that the Committee considered a letter from the attorney for plaintiffs in this action and for the Committee on Party Renewal.

No member of the Solano County Democratic Central Committee is an individual plaintiff in this action. The missing minutes of the October 1983 meeting and the apparent lack of true interest in the endorsements issue reflected in Exhibit 23 indicate that the Solano Committee considers itself a curious spectator rather than a party to the lawsuit by the Committee for Party Renewal. It should be noted that Solano County Democratic Central Committee is not a named plaintiff with respect to the first cause of action involving endorsements of candidates for a party's nomination in the primary election.

THE PLACER DEMOCRATIC CENTRAL COMMITTEE

Exhibits 13, 14 and 15, which purport to be heavily censored minutes of meetings of the Placer County Democratic Central Committee, do not suggest anything other than it was a curious spectator with regard to the lawsuit it considered to have been brought by the California Committee for Party Renewal.

The complaint lists the Placer County Committee as plaintiff on both the first (partisan endorsements) and third (party structure and procedure) causes of action. There is no indication Placer even considered joining the third. Nor is there any indication that it considered itself or acted to make itself a party to the action at all.

Respectfully submitted,

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State of California
N. EUGENE HILL
Assistant Attorney General

By: /s/ Geoffrey L. Graybill
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[Exhibit A and Proof of Service Omitted]

ADDENDUM DD

[Filed July 9, 1984]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851
[D. Ct. No. 83-5599-MHP]

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,
Plaintiffs/Appellees,
v.

MARCH FONG EU, Secretary of State of the State of California, *et al.*,
Defendants/Appellants.

On Appeal From the United States District Court
for the Northern District of California

MEMORANDUM OF PLAINTIFFS REGARDING AUTHORIZATION OF LITIGATION

[Designation of Counsel Omitted]

I. *INTRODUCTION*

This litigation is unique in that it unites a diverse and broad-based group of leading County Central Com-

mittees, the Libertarian State Central Committee, and prominent Democratic and Republican party leaders in seeking to restore their First Amendment rights of political speech and association. In their attempts to divert attention away from the merits of this litigation, the appealing defendants[1] argue that the so-called authorization issue somehow warrants dismissal of this litigation. However, if the veil of advocacy and rhetoric constructed by defendants is pierced, it becomes evident that the authorization question is not a bona fide issue. The District Court in its June 1, 1984 Order Following Remand was absolutely correct in finding and concluding that "the plaintiff central committees and each of them have authorization and capacity to bring and maintain this litigation." *See* Order Following Remand at 4, appended as Exhibit A to the Notice of District Court Order Following Remand. The fundamental First Amendment issues framed in this litigation remain, and despite defendants' best efforts, cannot be avoided.

Plaintiffs respectfully request that this Court find that there are no material issues of fact regarding the authority of the Central Committee plaintiffs to bring this litigation, affirm the District Court's June 1, 1984 findings of fact and conclusions of law regarding authorization, and affirm the District Court's original Orders and Final Judgment on the merits.

II. *DEFENDANTS HAVE WAIVED THEIR RIGHT TO CHALLENGE PLAINTIFFS' AUTHORITY OR CAPACITY TO BRING THIS ACTION*

The first time the defendants raised the issue of the Central Committee plaintiffs' authorization of this action was in a brief footnote to the Memorandum in Support

[1] The defendants who joined in the appeal from the District Court's Orders and Final Judgment are Secretary of State Eu, Attorney General Van de Kamp, and District Attorneys Smith (San Francisco County) and Himmelsbach (Santa Clara County).

of Defendants' Motions to Dismiss filed on March 5. *See* Appendix to Appellants' Emergency Motion for Stay on Appeal, Vol. V, p. 625. Outside of this passing reference, defendants made no mention of the authorization question in any papers filed with the District Court. Indeed, the only evidence they ever submitted on this issue was the declaration of Terence Faulkner which was filed with their supplemental appellate brief on May 8, 1984.

By failing to aver promptly that plaintiffs lacked capacity to bring this suit, defendants have waived their right to raise this issue. *See* Order Following Remand at 2. Rule 9(a) of the Federal Rules of Civil Procedure states that challenges to the capacity or authority of a party to sue must be raised "by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge." As Judge Patel correctly noted in her Order Following Remand, by failing to allege this defense in a timely fashion, "defendants are properly deemed to have waived the issue." Order Following Remand at 2.

Curiously, defendants do not respond in their brief to this finding and conclusion or discuss the authorities cited by the District Court. Defendants' silence is revealing, for it reflects the absence of contrary authority. This Court has consistently held that denial of a party's capacity or authority to sue must be raised by specific negative averment in the answer or in a motion filed prior to the answer. *See, e.g., Summers* v. *Interstate Tractor and Equipment Co.*, 466 F.2d 42, 49-50 (9th Cir. 1971); *Marks* v. *Brucker*, 434 F.2d 897, 899 (9th Cir. 1970). In *Summers*, this Court noted that Rule 12 "provides that every defense must be raised in the responsive pleading or by motion before pleading." 466 F.2d at 49. It thus held that since the defendant "did not raise the defense of plaintiff's capacity to sue by specific negative averment in its answer, or at any time until

appeal, it is deemed to have waived that defense." 466 F.2d at 50. Similarly, in *Marks*, this Court stated that where a party's lack of capacity to sue is at issue, it "must be specially averred else it is waived." 434 F.2d at 899.

Here, the appealing defendants made no such negative averment in their answer or at any time before they filed their answer. The defendants' general denial in their answer that the plaintiffs are not entitled to any recovery does not satisfy the requirements of Rule 9(a). *Ralston Oil & Gas Co.* v. *Gensco, Inc.*, 706 F.2d 685, 692 (5th Cir. 1983). *See Garbincius* v. *Boston Edison Co.*, 621 F.2d 1171, 1174 (1st Cir. 1980). Defendants' first reference to the authorization issue did not come until nearly three months after they had filed their answer, and even then, the reference was relegated to a footnote. They, like the defendants in *Summers* and *Marks*, did not fully address this issue until the appeal. Thus, defendants' right to make arguments regarding the authorization of the lawsuit must be deemed to have been waived.

III. *DEFENDANTS' COURSE OF CONDUCT FOLLOWING THIS COURT'S MAY 25, 1984 ORDER OF REMAND SHOULD PREVENT DEFENDANTS FROM RAISING NEW FACTUAL ISSUES ON APPEAL*

The District Court decided that it was fully capable of entering its findings and conclusions following this Court's Order of Remand without the necessity of holding an evidentiary hearing. This demonstrates that the District Court, which is in the best position to judge the legitimacy and bona fides of the defendants' attack on the Central Committee plaintiffs' authorization procedures, has concluded that such attacks are much ado about nothing. As demonstrated below, the District Court was absolutely correct.

Defendants fault the District Court for not conducting an evidentiary hearing on the authorization issue following this Court's May 25, 1984 Order. What defendants omit to tell this Court is that at no time did defendants request such an evidentiary hearing. At no time did defendants petition the District Court to reconsider its June 1, 1984 Order Following Remand. At no time did defendants bother to submit to the District Court proposed findings of fact and conclusions of law. Defendants chose to take no action in the District Court and, instead, now improperly attempt to use this Court as a fact finding body.

Defendants' inaction following this Court's May 25, 1984 Order of Remand belies their current expressions of doubt concerning whether the Central Committee plaintiffs intended to be parties to this litigation. Given defendants' course of conduct, this Court can properly find that the objections voiced for the first time in defendants' most recent appellate brief are untimely and should be disregarded. *See Garcia* v. *American Marine Corp.*, 432 F.2d 6, 8 (5th Cir. 1970) (facts may not be presented for the first time on appeal).

IV. *DEFENDANTS' ANALYSIS OF THE COMMITTEE BY-LAWS AND MINUTES IS PURELY SPECULATIVE, CONTRADICTED BY ALL AVAILABLE EVIDENCE, AND THUS RAISES NO ISSUE OF MATERIAL FACT*

All the available evidence indicates that the Central Committee plaintiffs properly authorized their participation in this lawsuit. In April, plaintiffs submitted declarations from the chair or vice-chair of each Central Committee attesting to that fact. As Judge Patel stated:

> the court has before it uncontroverted declarations under penalty of perjury from each of the eight central committee plaintiffs stating authorization has been given and the method by which it was

> given. The court is not prepared to assume that the eight officers lied under penalty of perjury nor is there any basis for disregarding the declarations. There being no facts in evidence controverting the declarations, the court finds that the plaintiff central committees and each of them have authorization and capacity to bring and maintain this litigation.

Order Following Remand at 4.

Following this Court's Order of Remand, plaintiffs engaged in the time consuming process of locating and collecting the Central Committee by-laws and the minutes concerning the authorization of this litigation. These materials were voluntarily filed with the District Court in two separate submissions, dated June 1 and June 19. Admittedly, the Committee minutes may not have been maintained in as much detail as the minutes of a major corporation's board of directors meetings, kept by a Corporate Secretary whose function it is to maintain such records. But that is to be expected, for the Central Committee plaintiffs are composed of laypersons who conduct party business during their evenings and weekends. They could not have foreseen that many months after they decided to join this lawsuit, defendants would choose to pick apart the language they had used to record their discussions concerning this lawsuit. Despite defendants' best efforts to find fault with such documents, the fact remains that these by-laws and minutes are entirely consistent with the previously submitted declarations. It is abundantly clear that these Committees intended to be plaintiffs to this litigation.[2]

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[2] Lacking evidence that the Central Committees did not authorize their participation in this suit, defendants have once again resorted to baseless innuendo, this time directed at the plaintiff Committee for Party Renewal, which is alleged to "have maneuvered to appear to act for [the Central Committees]." Defendants' Memo at 3. This is a further example of the "intemperate rhetoric" and "hyperbole and unfounded accusations" which the District Court

Only one Central Committee plaintiff, the San Francisco County Republican Central Committee, has not yet voted in full Committee on the question of participation in this lawsuit. That fact has never been denied. The declaration of Dolph Andrews, their chair, establishes that he chose to join this lawsuit as an individual plaintiff and, believing that he had the authority to authorize the participation of the Central Committee without taking it before the Committee for a vote, asked that they also be added as a plaintiff. The full Committee has since taken up the question whether to ratify the chair's decision to have the Committee join as a plaintiff. No final vote has yet been taken on the question.

Regardless of the outcome of the San Francisco Republican Central Committee's vote to ratify their chair's initial actions, the fact remains that the remaining seven Central Committee plaintiffs *did* discuss and vote on participation in this lawsuit. Nonetheless, defendants have seen fit to question whether these seven Central Committee plaintiffs have the authority to bring this lawsuit. Defendants introduce no evidence to support their charges, instead choosing to fabricate arguments from the texts of the Committee minutes and bylaws.

Defendants' most serious accusations are those based upon patent misreadings of these minutes and bylaws. For example, defendants claim that Mary Gingell, the former chair of the Libertarian Party, had to ask her Committee if she could become a paintiff, drawing from this the conclusion that the Libertarians had not authorized this action. Defendants' Memo at 5. In truth, the function which Ms. Gingell asked permission to perform, "doing the California Activist," consisted of writing and distributing the monthly Libertarian newsletter.

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found abundant in defendants' papers below. Order of District Court at 26 n.8, attached as Exhibit B to the Brief of Plaintiffs/Appellees filed with this Court on May 8, 1984.

Plaintiffs' Third Submission re Authorization of Lawsuit, Exh. 21.

Defendants claim that the minutes of the Alameda County Democratic Central Committee are "ambiguous on the question of whether any vote was taken on the issue." Defendants' Memo at 8. In fact, the minutes state "M/S/C—Perry/Ducey—That the ACDCC be a plaintiff in this lawsuit." Plaintiffs' Further Submission, Exh. 7. This entry indicates that a motion to join this lawsuit was made, seconded, voted on, and carried, *i.e.*, "M/S/C," thereby corroborating unequivocally the declaration previously filed by the Alameda chair.

Finally, defendants claim that the Santa Clara County Democratic Central Committee's vote to join the lawsuit in 1982 became void in 1983. Defendants' Memo at 9-10. In fact, their bylaws clearly state that the Committee "is an ongoing organization" (Plaintiffs' Further Submission, Exh. 8, Article I.B.), a provision which persuaded the Executive Committee that the old vote was still effective so that a new vote need not be taken. *See* Plaintiffs' Further Submission, Exh. 10, p. 2.

Defendants also choose to imply without any factual support that where the minutes are silent on whether particular bylaw requirements were met, the Committee violated those requirements. Defendants complain, for example, that "there is no indication" that the quorum and other bylaws requirements were met during the votes taken at the Los Angeles and San Francisco Democratic Committees. *See* Defendants' Memo at 6, 7, 8. Of course, there is no evidence from the documentation that the bylaw requirements were not met. There is thus no reason to disbelieve the sworn declarations long since submitted by plaintiffs.

Defendants also pose spurious questions about which of the three causes of action certain plaintiffs joined. *See* Defendants' Memo at 5 (Libertarians), 6 (Los An-

geles), 8-9 (Alameda), 11 (Placer). As previously stated, the secretaries of these Committees could not be expected to appreciate the legal niceties apparently demanded by defendants. Plaintiffs submit that the minutes unequivocally demonstrate the Committees' commitment to this lawsuit. To the extent that a particular set of minutes does not spell out all the details of authorization, the chair's declaration fills in the gaps. Defendants offer *no* contrary evidence to derogate the sworn declarations of the Committee chairs that identify in detail which causes of action the Committees joined. In short, defendants' imaginative attacks on the authorization of the Central Committee plaintiffs have no basis in fact.

Moreover, defendants seem to have forgotten that this lawsuit has thirteen individual plaintiffs, including the chairs of some of the most influential County Central Committees in Cailfornia and current members of the Republican and Democratic State Central Committees. The authorization of these individuals is not in question. As the District Court noted in its Order Following Remand, "there are a number of parties to this litigation whose authorization is not in question and who have been held to have standing" by the Court. Order Following Remand at 5, n.2. Thus, since defendants clearly have not successfully challenged the authorization of each Central Committee plaintiff, and have never challenged the authorization of the individual plaintiffs, this Court should proceed to decide the merits of plaintiffs' case. *See Natural Resources Defense Council, Inc.* v. *United States Environmental Protection Agency*, 507 F.2d 905, 910-11 (9th Cir. 1974) (deciding appeal even though only one plaintiff of several was held to have standing).

V. *CONCLUSION*

For all the above reasons, plaintiffs respectfully request that this Court affirm the District Court's find-

ings of fact and conclusions of law regarding plaintiffs' authorization of this action, as well as the District Court's Orders of April 16, 1984, and May 3, 1984 granting plaintiffs partial summary judgment and denying the motions to dismiss.

Dated: July 9, 1984

Respectfully submitted,

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Attorneys for
Plaintiffs/Appellees

[Proof of Service Omitted]

ADDENDUM EE

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 84-1851

SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE, SAN FRANCISCO COUNTY REPUBLICAN CENTRAL COMMITTEE, LOS ANGELES COUNTY DEMOCRATIC CENTRAL COMMITTEE, *et al.*,

Plaintiffs-Appellees,

v.

MARCH FONG EU, Secretary of State of the State of California, JOHN VAN DE KAMP, Attorney General of the State of California, ARLO SMITH, District Attorney of San Francisco County, *et al.*,

Defendants-Appellants.

DEFENDANTS' REPLY TO PLAINTIFFS' MEMORANDUM REGARDING AUTHORIZATION OF LITIGATION

[Designation of Counsel Omitted]

INTRODUCTION

By its Order filed August 1, 1984, this Court granted appellant's permission to file a reply memorandum restricted to the question of whether the plaintiff central committees authorized the subject lawsuit. Therefore, in this memorandum appellants will address the arguments

presented in the District Court's Order Following Remand filed June 1, 1984, and the Memorandum of Plaintiffs re Authorization of Litigation filed on or about July 9, 1984, which were directed to this subject.

The District Court makes essentially two arguments in response to this Court's Order on Remand directing that the District Court make findings of fact and conclusions of law as to whether appellee central committees authorized this lawsuit. Plaintiffs' memorandum reiterates the arguments of the District Court.

The District Court asserts that the question of whether the central committees authorized this litigation must be raised in the answer as an affirmative defense in accordance with Rule 9 of the Fed. R. Civ. P. or it is waived and the issue was not so raised so that it is not properly an issue on appeal.

The Order Following Remand also concludes (p. 4) that the plaintiff central committees gave authorization for this litigation and bases this conclusion on "uncontroverted declarations under penalty of perjury from each of the eight central committee plaintiffs stating authorization has been given and the method by which it was given." In this connection, the District Court asserts that defendants never made an issue in the context of the motions for summary judgment of whether the central committees had authorized this litigation and did not take opportunities purportedly available after April 9, 1984, to challenge the declarations (Order, pp. 2-3).

All of the conclusions and assertions of the Order Following Remand are without support in the record and are contrary to law. Defendants raised the issue of capacity to sue in accordance with Rule 9, Fed. R. Civ. P. Moreover, the issue of whether the central committees authorized this litigation was raised in the context of the motions for summary judgment.

An element of plaintiffs' prima facie case is that the challenged statutes imposed a substantial burden on plaintiffs' First Amendment right to associate as members of their political parties and express their views as a party. During the course of the proceedings in the District Court, defendants had been developing evidence, nearly all of which the District Court simply ignored in its memorandum order dated May 3, 1984, which demonstrated the challenged statutes were in fact the policies of the political parties to which plaintiffs belonged.

Such evidence in the context of motions for summary judgment would at a minimum raise issues of fact material to whether the statutes imposed substantial burdens on their freedom to associate as members of their parties. Moreover, the same evidence would manifest *all* plaintiffs' lack of standing including in the sense that their constitutional challenges to the statutes were not ripe for adjudication. (See *McMichael* v. *County of Napa* (9th Cir. 1983) 709 F.2d 1268; *Pence* v. *Andrus* (9th Cir. 1978) 586 F.2d 733, 736-738 (per Judge Wright).)

Evidence that the purported plaintiff central committees did not authorize this litigation would be a further demonstration of this point. Defendants utilized every means permitted them by the District Court to obtain information regarding whether the central committees had authorized the litigation. Plaintiffs took advantage of the restrictions which the District Court placed on defendants and denied defendants access to the information which was in the exclusive possession and control of plaintiffs. Defendants had no evidence with which to contradict the declarations even if they had seen them during or before the hearing on April 9 [several of the declarations were not filed and served for several days after the hearing] because defendants simply denied them access to it.[1]

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[1] The Faulkner declaration filed by defendants with their supplemental brief on appeal was prepared by and transmitted to de-

As demonstrated in defendants' memorandum filed in this Court on or about June 28, 1984, the requested information would have contradicted the declarations and highlighted their manifest incompetence as declarations "from each of eight central committee plaintiffs" as asserted by the District Court. Even uncontradicted, the declarations could not support the District Court's findings of authorization. The portions of the declarations upon which the Court relied are legal conclusions and hearsay for which there are no exceptions and are therefore insufficient to support the Court's findings. The documents further highlight the error committed by the District Court in granting judgment for defendants on their motion for summary judgment.

Leaving aside the serious questions raised by the documents in Appendix X regarding the credibility of individual plaintiff declarants, plaintiffs' conduct in obstructing access to the documents which are obviously critical to the progress of the judicial process of determining the truth of the material facts on the issue of authorization by the central committees warrants denial of access to the equitable jurisdiction of the federal courts which their complaint seeks to invoke. (Cf. *Abbott Laboratories* v. *Gardner* (1967) 387 U.S. 136, 155.)

Defendants therefore respectfully request that this Court reverse the judgment below and remand with an order that the entire action be dismissed.

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fendants' counsel by Mr. Faulkner's attorney who initially contacted defendants' counsel after this matter was on appeal. Plaintiffs' counsel has taken the position that Rule 7-103 of the Rules of Professional Conduct of the State Bar of California precludes defendants' counsel from interviewing members of any of the purported plaintiff central committees except through formal discovery to which plaintiffs' counsel would object. Plaintiffs have taken the added precaution of not providing a roster of members of the committees as requested by defendants (Appendix VI, pp. 834-835).

THE FINDINGS OF THE DISTRICT COURT ON REMAND ARE ERRONEOUS AS A MATTER OF LAW AND ARE NOT SUPPORTED BY THE RECORD

A review of the record demonstrates that the findings and assertions of the District Court in its Order Following Remand are without support therein.

Defendants who filed other than answers by way of disclaimer conducted a joint defense of the action (see Appendix II, pp. 172-176; Appendix VI, pp. 791, 795). Moreover, the collective answer to the first amended complaint (Appendix II, p. 173:24-27) sets forth the challenge to plaintiffs' capacity to bring suit in accordance with Rule 9, Fed.R.Civ.P. (Appendix II, p. 125:23).

In February 1984, defendants filed a status conference certificate with the District Court in which it informed the court that it intended to raise standing issues and to conduct discovery with regard to those issues (Appendix II, p. 174:1-12). Defendants requested that District Court issue an order limiting discovery to jurisdictional and standing issues pending a ruling on defendants' anticipated motion to dismiss (*Id.*).

At the status conference held on February 27, 1984, the District Court informed defendants that plaintiffs' anticipated motion for summary judgment would proceed at the earliest possible time permitted by its calendar in light of the appending Primary Election in California in June of 1984 (Appendix IX, p. 33:17-19). The court set March 5, 1984, as the date all notices of motion should be filed and April 2 for hearing on the motions (Appendix IX, p. 35:9-24). With regard to defendants' need for discovery, the Court stated to defendants' counsel (Appendix IX, p. 37:13-20):

> "The Court: Counsel, let's do this, because the time is short, admittedly. I will give you a chance to respond to their motions for summary judgment without any discovery in your response. If you need

> additional discovery, set forth a response what additional discovery you need and approximately how much time you need to do it. I will not rule on any motion for summary judgment if there is discovery that needs to be done in order to address it."

The court acknowledged that Fed.R.Civ.P. 56(f) entitled defendants to discovery prior to a ruling on a motion for summary judgment (see *Alghanim* v. *Boeing Company* (9th Cir. 1973) 477 F.2d 143, 148) and instructed that any permitted discovery be conducted informally (Appendix IX, p. 38).

After receiving and reviewing the voluminous documentation filed by plaintiffs in support of their motion, defendants were compelled to seek a three-week extension of time to file their opposition (Appendix IX, pp. 45-48). The Court allowed a one-week extension and in so ruling stated (*Id.*, p. 53:2-6, 15-25, 54:1-2):

> "The Court: I know that doesn't give defendants as much time as they asked for, but time is crucial. I am keeping in mind the burden that you do have.
>
> "If there are factual issues that you have not been able to reach, either because of discovery or investigation problems, then I suggest what you do is that you set those forth, those problems forth in your papers when you file them. Now, it is not automatically going to give you additional time to file papers after the hearing. So don't depend upon that. But if those are critical, and you have not been able to compile whatever factual matters that you have in order to respond, you may set those forth in your papers here when you file them on March the 26th."

On or about March 19, 1984, and in accordance with the instructions of the District Court, defendants advised plaintiff's counsel by telephone of its preliminary discovery request, which was confirmed by letter. The request specified the production of the by-laws and

minutes of the plaintiff county central committees and Libertarian Central Committee. An alternative request was that if minutes did not exist for some of the central committees, a competent sworn statement be given of the method by which the central committee purportedly authorized the lawsuit (Appendix VI, pp. 828-830, 834-835).

Plaintiffs did not provide the requested documentation until after this Court's Order on Remand filed May 25. In accordance with the District Court's instructions, defendants advised the Court in their papers filed on March 26 in opposition to plaintiffs' motion for summary judgment and in support of defendant's motion for summary judgment of the discovery requested and of their efforts to secure it (Appendix VI, pp. 828-837). Defendants also explained the relevance of the requested documentation to the standing and First Amendment issues in the case; most of the brief was devoted to the developing the common base for the motion to dismiss and the motion for summary judgment (see esp. Appendix VI, pp. 713:3-25; 720:5-26; 722:10-20; 723-724:1-8; 736:14-25; 829:5-27; Appendix VII, pp. 918-821).

Defendants did not receive copies of the declarations regarding purported authorization filed by plaintiffs on Friday, April 6, 1984, until after the hearing on the motions to dismiss and summary judgment held on Monday, April 9, 1984 (Appendix VIII, p. 47:4-11). Plaintiffs filed several additional declarations a few days later.

At the hearing defendants' counsel requested that any order which may issue adverse to the State be stayed for a period sufficient "to evaluate just what the nature of the order is and what procedure we should follow at that point." (Appendix VIII, p. 51:19-24.) The District Court's response was (Appendix VIII, p. 58:8-11):

> ". . . I would deny a stay and you may indicate in the order, if you want a stay you can go to the

Ninth Circuit for maybe not so humble an opinion as mine."

Moreover, the Court stated that its order would be issued in writing that day or the following day (Appendix VIII, p. 57:14-25). The Court requested plaintiffs' counsel prepare an order (*Id.*). The reason for the urgency as stated by the Court was the imminence of the primary elections (Appendix VIII, p. 52:4-16). Plaintiffs provided the Court with an order on April 10, 1984 (Appendix IX, pp. 20-27).

At the hearing defendants again raised the need for continuing discovery and the relevance of it (Appendix VIII, pp. 47-50:1-22) and again advised the Court that plaintiffs had not provided the minutes and by-laws as requested (Appendix VIII, p. 49:20-25). Despite the previous assurances provided to defendants, the Court simply ignored defendants request (Appendix VIII, p. 50:20-22).

Thus, the District Court made it very clear that defendants had but one option after April 9 and that was to present its case to this Court. The District Court filed its order and judgment on April 16, 1984; defendants filed their notice of appeal and motion for a stay on that same day. By its own direction, the District Court lost jurisdiction for further proceedings in connection with its order (*Sumida* v. *Yumen* (9th Cir. 1969) 409 F.2d 654, 656-657). The District Court did not file its memorandum decision until more than a week after this Court issued its stay order on April 24, 1984.

One day prior to this Court's Order on Remand, which was filed on May 25, 1984, the District Court filed an order in this case entited "Further Status Conference," a copy of which is attached hereto as Exhibit A. The Order instructs counsel for defendants and plaintiffs to file a joint status certificate (see, e.g., Appendix II, pp. 172-176) within ten days of the filing by this Court of a disposition of the appeal.

The District Court filed its Order Following Remand several days before the joint status certificate was due to be filed and within a week after this Court's Order on Remand was filed. When it filed the Order Following Remand, the District Court divested itself of jurisdiction. (See *Sumida* v. *Yumen, supra,* 409 F.2d at 656-657). The District Court filed its Order on June 1, 1984; the California Primary was to be held on June 5, 1984.

The District Court's Order on Remand demonstrates that if any proceedings in this action remain to be considered by the District Court after decision by this Court, considerations of fairness make it appropriate for this Court to order that the proceedings be handled by a different judge. (*Cord* v. *Smith* (9th Cir. 1964) 338 F.2d 516, 525-526.)

PLAINTIFFS' CONDUCT WARRANTS DISMISSAL OF THE ACTION ON EQUITABLE GROUNDS

The record demonstrates that the actions of the individual plaintiff declarants, the plaintiff Committee on Party Renewal and the Committee's counsel have obstructed the judicial process of ascertaining the truth concerning whether the central committees named in the complaint are in fact plaintiffs as alleged.

Plaintiffs have selectively presented inadmissible declarations and documentation in circumstances they have created which have prevented their being subjected to discovery, cross-examination and trial. Plaintiffs acknowledge that documentation submitted after remand is subject to interpretation and creates conflicts with the declarations and assert that the minutes do not really mean what they purport to say because those persons who prepared them did not understand what they were doing (plaintiffs' memo re authorization, pp. 6-9).

The record demonstrates that the plaintiffs National Committee for Party Renewal and its California chap-

ters instigated and orchestrated this litigation. Counsel for plaintiffs is actually counsel for the Committee for Party Renewal (see, e.g., Appendix X, pp. 15, 113). The Committee began its drive for litigation no later than September 1982 (Appendix X, pp. 49, 51). When the District Court asked counsel for the Committee why the litigation was not brought earlier, he responded (Appendix IX, p. 10:9-13):

> "Just a gathering of authorities, if the court please, and *the organization of the plaintiffs, in order to bring the case*, was quite a laborious enterprise, given all of the different political organizations and all of that." (Emphasis added.)

What the conflicting inferences of the documentation and declarations and the conduct of plaintiffs in the District Court demonstrate is that plaintiffs are not before this Court and were not before the District Court with clean hands and have not done equity in connection with the matters for which they seek equitable relief. An order from this Court that the entire action be dismissed is therefore entirely appropriate.

Defendants therefore respectfully request that this Court reverse the judgment below and remand with an order that the entire action be dismissed.

DATED: August 11, 1984

JOHN K. VAN DE KAMP
Attorney General
N. EUGENE HILL
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By: _____
GEOFFREY L. GRAYBILL
Deputy Attorney General

[Exhibit A and Proof of Service Omitted]